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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

NUMBER 6 ORIGINAL.

IN EQUITY.

THE STATE OF LOUISIANA, *Complainant,*

vs.

THE STATE OF MISSISSIPPI, *Defendant.*

BRIEF OF COMPLAINANT IN ANSWER TO EXCEPTIONS TO REPORT OF SPECIAL MASTER.

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SYLLABUS.

1. The middle of the channel of navigation—not necessarily the deepest part—is the boundary line, where navigable water constitutes the boundary line between two States.

   Minnesota v. Wisconsin, 64 L. Ed., 558-563-564.
   Iowa v. Illinois, 37 L. Ed., 57.
   Washington v. Oregon, 53 L. Ed., 969.
   Arkansas v. Tennessee, 62 L. Ed., 638.
   Minnesota v. Wisconsin, 64 L. Ed., 563.

2. The boundary line between the States of Louisiana and Mississippi is the boundary line as it existed at the date of the treaty by which Louisiana was acquired, subject to changes made by erosion or accretion.

   See Oklahoma v. Texas, 67 L. Ed., 435.

3. Where a navigable river is the boundary line between two States and the channel of navigation is changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying courses of the stream.

   New Mexico v. Texas, 72 L. Ed., 127, in No. 4.
   Oklahoma v. Texas, 68 L. Ed., 1120.
   Oklahoma v. Texas, 67 L. Ed., 435.
   Arkansas v. Tennessee, 62 L. Ed., 638.
   Nebraska v. Iowa, 36 L. Ed., 186.
   New Orleans v. U. S., 9 L. Ed., 573.
   L. R. A., 1918 D., 258.

4. Where, in a stream which is the boundary line between two States, an avulsion occurs, the resulting change in the channel works no change in the boundary, which remains in the middle of the old channel as it existed just prior to the avulsion (subject to change by accretion as long as the water continuously flows therein).

Arkansas v. Tennessee, 70 L. Ed., 208.
Arkansas v. Tennessee, 62 L. Ed., 1213-638.
Oklahoma v. Texas, 67 L. Ed., 435.
Arkansas v. Mississippi, 63 L. Ed., 832.
Missouri v. Nebraska, 49 L. Ed., 881.
Nebraska v. Iowa, 36 L. Ed., 188.

5. While, after an avulsion or cut-off made by a river which is the boundary between two States, the boundary immediately after the cut-off is the same, as just prior thereto, such boundary is subject to change by accretion as long as the water *continuously* flows through the old channel, but when the water ceases to run therein, and becomes stagnant, the boundary line becomes *fixed* in the middle of the old channel at such time and the gradual filling up of the bed that ensues, is not to be treated as an accretion, but as an ultimate effect of the avulsion.

Arkansas v. Tennessee, 70 L. Ed., 208.
Arkansas v. Tennessee, 62 L. Ed., 638.

6. In establishing such boundary line in the old channel, "absolute accuracy is not attainable. A degree of certainty that is reasonable, as a

practical matter, having regard to the circumstances is all that is required."

Arkansas v. Tennessee, 70 L. Ed., 208.

7. Where there is an avulsion causing the drying up of the old bed, it does not have the effect of establishing as the boundary the ancient boundary, as it existed at the earliest record.

Arkansas v. Tennessee, 62 L. Ed., 639.

8. Where the water cuts through an accretion *once vested*, it does not destroy the ownership of the land cut off from the main body.

DeLassus v. Faherty, 164 Mo., 361; 64 S. W., 183.

Cited in 15 Dec. Nav. Waters, Sec. 44 (3).

9. Where a navigable river is the boundary between two States and the river is changed several miles by erosion on one side and accretion to the other, the boundary between the States changes with the river, although the accretion to one State covers the *location* formerly belonging to the other State.

See Doebbeling v. Hall, 41 A. L. R., 389.

10. Land formed beginning next to the shore extending into the channel is accretion, *though higher next to the channel.*

State of Kansas v. Merriweather, 182 Fed., 457.

15 Dec. Nav. Waters, Sec. 44 (3).

11. One asserting material changes in the course of a boundary river which will affect the boundary has the burden of proving them, whether plaintiff or defendant.

Oklahoma v. Texas, 67 L. Ed., 428.
Bissell v. Fletcher, 27 Neb. 582; 43 N. W. 350.
9 C. J. 271.

12. Circumstances sometimes carry with them a conviction which the most positive testimony will sometimes fail to produce.

The Robert Edwards, 5 L. Ed., 238.

13. Circumstances altogether inclusive, if separately considered, may, by their number and joint operation, be sufficient *to constitute conclusive proof.*

Kemper v. Churchill, 19 L. Ed., 461.
Castle v. Bullard, 16 L. Ed., 421.
Wagner v. Hall, 21 L. Ed., 504.

14. The mere fact of the assertion of territorial jurisdiction by a government over territory in dispute between it and another one, and the enforcement there of its civil and criminal laws for a period of years, is not sufficient to establish its title to the territory where there has been neither a *continuous assertion of right on the one side, nor an acquiescence therein upon the other.*

State of Oklahoma v. State of Texas, 71 L. Ed., 146.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

NUMBER 8 ORIGINAL.

IN EQUITY.

THE STATE OF LOUISIANA, *Complainant*,

VS.

THE STATE OF MISSISSIPPI, *Defendant*.

BRIEF OF COMPLAINANT IN ANSWER TO EXCEPTIONS TO REPORT OF SPECIAL MASTER.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

NATURE OF SUIT AND CONTENTIONS OF THE PARTIES.

This suit is brought to locate and establish by the decree of the Court, that part of the boundary line between the States of Louisiana and Mississippi which separates Willow Point and adjacent premises in Louisiana from Township 9 North, Range 8 West in Mississippi.

Surveys made in 1823 and 1824 are accepted as correctly locating the river and the shore line of the states at the date of these surveys respectively.

By order entered herein at the October Term, 1928, this case was referred to Honorable Thomas G. Haight, Special Master, with direction that he find the facts therein, and report them to your Honorable Court, together with his conclusions of law, and his recommendations for a decree herein.

In 1930, the Special Master filed his report herein, finding the facts to be as claimed by the State of Louisiana, and he found the law relied upon by complainant to govern the case. In fact, he found that, *generally*, there was no disagreement as to the law applicable.

On Monday, the 18th of May, 1930, the court ordered the Report of the Special Master to be filed, with right to the parties to file exceptions on or before Monday, October 6th, 1930.

The State of Mississippi filed Exceptions to said Report contained in four pages under Exceptions A, B, C and D, which we refer to, but do not copy herein for the reason that the defendant excepted to the entire report of the Master.

On Monday, October 13th, 1930, your Honors rendered an order assigning the exceptions to the report of the Special Master for hearing, Monday, January 5th, 1931, and ordered that brief for the defendant should be filed three weeks prior to the date of argument, and that of the complainant, one week prior to that date.

The complainant and defendant agree that the middle line of the navigable channel of the river at the respective dates of these surveys was then the true boundary line.

In 1823-24 location of the premises in controversy were known as Tullos Island, and certain parts of the Mississippi mainland adjacent thereto. Prior to 1882, this island was renamed "Island No. 98".

The complainant, the State of Louisiana, contends:

1. That between the dates of the surveys made in 1823 and 1824 and the survey made by the Commission in 1912-1913, erosions took place on the Mississippi shore of the river and accretions attached to the Louisiana shore; that thereby the location of the river, and hence of the boundary line, was gradually and imperceptibly moved in an easterly and northeasterly direction a distance of five or six miles, and that these accretions to the Louisiana shore became Louisiana territory.

2. That in 1912-1913 the river suddenly changed its course, cut across the bar formed by the accretions to the Louisiana shore, and thereby the navigable channel of the river was suddenly changed to the location shown by the survey made in 1912-13 (Complainant's Exhibit F); but that this change, being by avulsion, the boundary line remained and now is where the extreme northeasterly and easterly midchannel of the river around the Albemarle Bend was prior to the avulsion, subject to change by accretion as long as the water continuously flowed therein.

The State of Mississippi disputes complainant's contentions and claims:

1. That the burden is on the complainant to prove that the Mississippi River gradually moved northeasterly and easterly from its 1823 channel to its 1882 channel, and that the Louisiana shoreline pro-

gressively followed it by accretions; that Louisiana has failed to bear this burden, and by reason thereof it has failed to show title to accretions which admittedly attached to the westerly shore of the river subsequent to 1882.

2. That subsequent to 1882 the river above and to the west of Willow Point cut into the Louisiana shore and thereby deflected the current from a southeasterly to a northeasterly direction; that the river, thus deflected, cut around the head and to the north and east of what was then left of Tullos Island, enlarged what is known as the "chute" between the island and the Mississippi mainland, making a new channel there; that the old bed of the river to the west of Tullos Island filled up, and thereby that island became attached to the Louisiana shore; that the river continued to cave the Mississippi shore east of Tullos Island and added to that Island by accretions until 1912-1913, when it suddenly abandoned its new channel and returned to the old 1882 channel, and thereby what theretofore had been Tullos Island again became an island, but greatly enlarged by accretions thereto.

3. If defeated in these contentions, Mississippi claims that its title to the disputed territory has become unassailable by reason of its long continued possession of, and its exercise of sovereignty and dominion over the same, with acquiescence therein by Louisiana.

FINDINGS OF THE SPECIAL MASTER.

1. That the changes in the location of the channel of the Mississippi River at the place under examin-

ation herein, from 1823 to the change which took place in 1912-1913, were due to gradual erosions on the Mississippi shore and gradual accretions to the Louisiana shore, and that none of said changes was due to avulsions.

2. That the change in the location of the channel of the river which took place in 1912-1913 was due to an avulsion whereby a new channel was formed in approximately the location where it existed at the time the testimony herein was taken.

3. That the accretions which attached to the Louisiana shore up to the avulsion of 1912-1913, and thereafter so long as the current continued to flow in the channel as it existed prior to said avulsion, became Louisiana territory.

4. That the boundary line between the parties hereto was not changed by the avulsion of 1912-1913.

5. That Mississippi did not, by possession or the exercise of sovereignty or dominion over the disputed territory, acquire any right or title thereto.

6. That at this time the true boundary line between the States of Louisiana and Mississippi is the middle of the navigable channel of the Mississippi River as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion in 1912-1913.

I.

Defendant first contends that complainant has failed to prove, by a preponderance of the evidence,

that the moving of the Louisiana shoreline, in an eastern and northeastern direction, at the point in controversy, between the years 1824 and 1882, was the result of accretion, and not the result of an avulsion, and having thus failed, the decision of the court must be in favor of the defendant.

We will, therefore, consider the testimony in the record, between the dates of 1824 and 1882, to determine whether there is any merit in defendant's contention on this point.

Complainant's "Exhibit G" was offered in evidence without objection. On this "Exhibit G" the Louisiana bank line of the river in 1866 was shown. (R. 129.)

In addition to this, in January, 1929, the following agreement of counsel was entered into, to-wit:

AGREEMENT OF COUNSEL, JANUARY, 1929.

In the above numbered and styled cause, the counsel of complainant and the counsel for defendant have made and signed the following agreement, to-wit:

1st, That in R. 175, it is admitted that witness, Capt. H. M. Marshall said:

> "There was a swift current flowing down between the two islands, and a channel to the East of both islands. Without being able to say how wide it was, it was possibly 1000 feet wide, etc., instead of 100 feet wide, as transcribed in the record."

2nd, That the questions and answers of Capt. Chas. H. West, as shown on pages 28, 29 and 30 of Com-

plainant's First Supplemental Brief, be received in evidence herein, with the same effect as if he had been testifying as a witness.

That the following blue prints be admitted as evidence when certified to by Walter H. Hoffman, Secretary of the State Board of Engineers of the State of Louisiana, as correct copies of the original on file in the office of the State Board of Engineers, to-wit:

1st, Map showing changes in river bank and levee lines along the front of Illawara and Villa Vista Plantations, in the Parishes of East Carroll and Madison, Louisiana, from 1824 to 1889. * * * Prepared in office of the State Board of Engineers, New Orleans, La., Jan. 3rd, 1900. Scale 1:20,000.

2nd, Map of the Alsatia, Salem, Villa Vista, Mascot Bend, in the Parishes of East Carroll and Madison, Louisiana, showing levees built from 1866 to 1906, and bank lines of 1866 and 1899, prepared by requst of Capt. G. H. Hoffman, U. S. A., from the records of the office, by the State Board of Engineers, January, 1906. Scale 1:20000.

3rd, Blue Print from original tracing, showing Louisiana bank line of 1866, at Willow Point and vicinity. This agreement is signed in triplicate, in January, 1929.

The State of Louisiana.
By John Dale.

The State of Mississippi,
By Rufus Creekmore.

Notwithstanding the fact that complainant's "Exhibit G" was introduced and filed in evidence without objection, and notwithstanding the above agreement and the introduction thereunder of the two blue prints showing the Louisiana bank line of the river in 1866, in front of Willow Point, the defendant, on page 11 of its brief on exceptions to the Master's Report, says the map of 1866 was not introduced in evidence, and on page 49 thereof it says:

> "The purported map of 1866, R. 147, was not introduced in evidence, and the blue print based on such was not admissible in evidence, because not founded upon any facts disclosed by the record, and being in effect hearsay."

This objection is urged, notwithstanding the fact that defendant, in January, 1929, agreed—

That the following blue prints be admitted in evidence, when certified to by Walter H. Hoffman, Secretary of the State Board of Engineers of the State of Louisiana, as correct copies of the original on file in the office of the State Board of Engineers, to-wit:

The two blue prints, and what they show, as set out in the above agreement of counsel is here shown. They show, among other things the Louisiana bank line of 1866.

Small copies of these blue prints showing the Louisiana bank line, at Willow Point, in the years 1824, 1866 and 1882, appear at page 32 of complainant's Second Supplemental Brief.

Complainant's "Exhibit G" to the bill of complaint is a blue print made by Captain C. H. West, a Civil Engineer in active practice for 42 years, and a member of the Mississippi River Commission since 1910.

On this blue print Captain West had combined and correlated on one sheet the 1823 survey of a part of Township 9 North, Range 8 West, Issaquena County, Mississippi, and the survey of 1824 of a part of Township 19 North, Ranges 14 and 13 East, Parish of East Carroll, Louisiana; also the Louisiana and Mississippi bank lines of the river at the date of these surveys respectively. By broken lines he shows the Louisiana bank line of the river in 1866.

It is not disputed that Complainant's "Exhibit G" shows correctly the Mississippi River Commission's Survey of both the Mississippi and Louisiana territory in question, and the respective bank lines of those states at the respective dates when these surveys were made; or that this exhibit shows the correct relation of these two surveys to each other, although, in the brief opposing the Master's Report, defendant claims there is no competent evidence of the survey of 1866.

It is undisputed that between 1823 and 1913 the location of the Mississippi River at the place in question had changed from that shown by the surveys in 1823 and 1824 to a location five or six miles northeasterly and easterly therefrom, the latter location being shown by a survey of the Mississippi River Commission made in 1912-1913 (Complainant's "Exhibit F"; Defendant's "Exhibit 6-D"). That survey shows the channel of the river both before and after the cut-off of those years.

The 1866 Louisiana bank line at Willow Point, including Sections 1 to 9, is also shown on Complainant's "Exhibit H", a small copy of which is inserted in defendant's original brief at page 60 thereof.

The next survey of the Louisiana bank line at

Willow Point is shown in Complainant's "Exhibit B. B." This was a survey of Hopkins' Island, made in 1869-1870, by Rob't Boyd, U. S. Government Surveyor, under instructions of the Surveyor General of Louisiana.

This survey of 1869-1870 shows the relation of Hopkins' Island to Louisiana, and the location of the Louisiana bank line as it then existed at *Willow Point, including Sections 1 to 9.*

Complainant's "Exhibits E.E. and E.E.E." show the Mississippi River Commission Survey made in 1882 with soundings taken, the charts being completed in 1882, and which is usually designated as the 1882 survey. This survey shows the bank line of *Willow Point at this time, and shows the sections referred to from 1 to 9.*

The chart of the survey is also shown on Complainant's "Exhibit M", a small copy of which defendant has inserted at page 12 of its original brief, showing *Willow Point, including Sections 1 to 9.*

On pages 10 and 11 of Complainant's *First Supplemental Brief*, there is a table showing the changes in the fan shaped Sections 1 to 9, being Willow Point in Louisiana. The inland part of these sections all start from a common point and extend in a fan shape to the river. In this table complainant had estimated 73 yards on the ground to 1/8 of an inch on the map. The exact distance is 70 yards to 1/8 of an inch on map 1 to 20,000.

By taking the scale of the U. S. Survey of 1824, which is on a scale of 2 inches to 1 mile, that is, 2 inches to 1760 yards, this would give 110 yards on the ground to 1/8 of an inch on the map; therefore, it is easy to ascertain the length of each section line of said Sections 1 to 9 as they existed in 1824.

Complainant's "Exhibit G" is on a scale of 1 to 20,000; that is, 1 inch on the map would represent 20,000 inches on the ground.

Then by measuring from end of the section line as same existed in 1824, to the Louisiana bank line of 1866, it is an easy matter to ascertain how far the river moved eastward, at any given point between 1824 and 1866; and by applying the same methods, it is easy to ascertain how far it moved eastward between 1866 and 1869-1870; and by the same method, it can be ascertained how far it moved eastward between the years 1870 and 1882. By dividing 20,000 inches by 12 it would give the number of feet on the ground to 1 inch on the map, which would be 1666 2/3 feet. By dividing the feet by 3 it would give the number of yards on the ground to 1 inch on the map, or 555.55+ yards. By dividing the yards by 8 it will give the yards on the ground to 1/8 of an inch on the map, or 69.44+ yards to each 1/8 of an inch. To place these calculations in whole numbers, we have used 70 yards on the ground to 1/8 of an inch on the map. This would give a table as follows:—

Table showing yards on the ground, represented by 1/8 of an inch on the map.

Inches	Yards
1/8=	70
2/8=	140
3/8=	210
4/8=	280
5/8=	350
6/8=	420
7/8=	490
1 inch or 8/8=	560

Owing to the fact that the table, shown on Complainant's First Supplemental Brief, at pages 10 and 11, in which 73 yards on the ground was used to 1/8 of an inch on the map, is near enough correct to demonstrate the impossibility of an avulsion at the point in controversy, between the years 1924 and 1882, we are using in this brief 73 yards on the ground to 1/8 of an inch on the map. While 70 yards to 1/8 of an inch would tend to be more favorable to complainant, the difference is too small to make any practicable difference.

Therefore, without again inserting the table in this brief we refer the court to pages 10 and 11 of Complainant's First Supplemental Brief for said table.

ST. FRANCIS CHUTE.

Defendant, in its brief on the Exceptions to the Master's Report on page 11 thereof, says:

> "A depression slightly to the east of the location of the 1823 channel, not named on the charts, but locally known as St. Francis Chute, is clearly shown on each of them."
>
> "Witness for both complainant and defendant show this depression *to be the old filled up 1823 river channel.*"

As the witnesses were not centenarians, of course the court well understands that they could not know that the so-called St. Francis Chute was "*the old filled up 1823 river channel.*"

On page 10 of defendant's brief on the Exception to the Master's Report, he says:

> "The testimony of complainant's witness, George Prince, shows that he is familiar with this old 1823 channel." (R. 39.)

Captain Prince's statement in this matter was on cross-examination, and is as follows:

> Q. Do you know whether or not there is a point where the water now backs up in the old channel of 1823 in times of high water, where the old channel originally came in here?
> A. Yes, sir.
> Q. Water does back up in there, does it?
> (fol. 34) A. Yes, sir.
> Q. At times of high water?
> A. Yes, sir.

It is patent that Cap't Prince, who was 56 years old in 1926, R. 21, and first became acquainted with this section of the river in 1897, could not know whether the said chute was the old channel of 1823. Evidently what the witness was intending to answer was that he knew a point where, in times of high water, the water backed up into a chute. If the witness had been asked the direct question as to whether he knew that was the old channel of 1823, we cannot conceive that he would have replied that he did. It would seem that the answer obtained from the witness, was due to the way the question was framed by counsel for defendant.

Defendant, in its brief, on Exceptions to the Master's Report, on page 10, referring to the 1823 channel says:

> "Complainant's witness, George Newman is also familiar with this channel; (meaning the channel of 1823) his testimony showing that it runs in a *northeasterly* direction from about Henderson's until it reaches the present river channel at about Willow Point." (R. pp. 55, 56, 58, 59, 60.)

The witness referred to as testifying in these pages is Ernest Newman and not George Newman. Complainant will merely submit the cross-examination of this witness on this point to show to the court that the witness did not testify that he was familiar with the old channel of 1823. The witness testified as follows: (R. 55, 56, 58, 59 and 60.)

Q. Do you know anything about St. Francis Chute?

A. Yes, sir.

Q. In 1897, how far east of St. Francis Chute to the head of it?

A. Which direction,—east?

Q. Yes, sir.

A. It was very near at St. Francis at that time. There was a sand bar up beyond, right between—it might be going east. It is about four or five miles.

Q. In 1897?

A. Yes, sir; from the lower end from St. Francis to the tow head it is quite a stretch.

Q. Do you know where the old river channel of 1823 south of Willow Point plantation was?

A. Where the old river channel was?

Q. Yes, sir?

A. *No, sir; I didn't know there was an old river channel in there.*

Q. Does not the water back up in the old channel now?

A. There is a *little chute* that runs off from Henderson, but *there has never been no channel —just a little chute behind the bar.*

Q. Don't you know that when the water is high now that it goes up the old channel for more than a mile? I don't mean when it overflows, but just when there is a comparative high stage of the water?

A. There is just a kind of a slough there that

runs up to Henderson's, and it has been there ever since I can remember.

Q. And that is approximately east of the land down there in Lot 8, south of Willow Point plantation?

A. Where? I didn't hear you.

Q. It is a point approximately east of Lot 7 and Lot 8, a general southeast direction from Willow Point plantation, is it?

A. *No; it is almost due south.*

Q. That's where it was, wasn't it?

A. Yes, sir.

Q. Now, isn't the old channel right here about, right along down here in this direction?

A. *I don't know of any channel in there.*

Q. Isn't it right there today?

A. *Not that I know of.*

Q. From eight to ten feet lower than this land up here in Section 30 and this land down here in 31, right there on the ground today?

A. Well, there may be, but you see this chute that comes through here is a little narrow chute that comes down along the main shore, not in the island. The current in high water will pass up through here, and comes over seven or eight miles around the bend, and we call that St. Francis.

Q. I want to ask you if you would go in there today, if there is not a clear delineation of this channel up in Sections 21 and 20?

A. Do you mean on the island that has been cut off?

Q. Yes, sir?

A. *No, sir.*

On page 11 of defendant's brief on exception to the Master's Report, counsel for defendant says:—

"Defendant's witness, Lawrence Townes testified that he was familiar with this *old river*

channel, St. Francis Chute; that it is on the Louisiana mainland, and runs in a southerly direction down from Mrs. Newman's Plantation."

This remarkable witness testified, when he went there, referring to St. Francis Chute, "*That was the main Mississippi River, when I went there, and it was named St. Francis Chute years later.*"

We will give the court his testimony exactly as he stated it so that there can be no doubt as to what he said. It is as follows:

> Q. Now, you mention a lake that was there in 1900. Was that a lake or a slough?
>
> A. This place what we call St. Francis Chute.
>
> Q. You call it a little lake—you give it the name of St. Francis Chute?
>
> A. It is named St. Francis Chute.
>
> Q. Where is that?
>
> A. Over the other side of the river joining Mrs. Newman's, right down from Mrs. Newman's place, the Newman Tow Head. *That was the main Mississippi River when I went there and it was named St. Francis Chute years later.* (R. 232-233.)

Witness went to Chotard which is across the river from this chute in 1880. (R. 220.)

The chart of 1882 was made by the Mississippi River Commission, a small copy of which is inserted in defendant's original brief at page 12, this being Complainant's Exhibit M, made from Chart 45 of the Survey of 1882. This chart, in front of Sections 8 and 9, shows the Louisiana bank line of 1824, and the bar next to the river in 1882, in front of same sections was about 1½ miles east of the 1824 bank line.

As shown by Judge Haight, Special Master, on page 12 of his report, the counsel for Mississippi admitted on page 12 of their original brief, that in front of Section 7 the channel in 1882 had changed eastward approximately 1½ miles from the *1823* (1824) survey.

Sheet 17 of the Mississippi River Commission charts, shows in 1882 heavy timber growing where Townes testifies was at that time the channel of the Mississippi River.

This witness is contradicted by the surveys of 1866 and 1870, as shown in the table hereinabove set out, and by the survey of 1882, and by the following witnesses, to-wit: I. B. Beard, the Newmans, E. T. Purnell, and Cap't. Jos. V. De Lahunt.

Mr. Beard, who was born in 1866, and recollected Willow Point for 50 years (since 1876), and was a brother-in-law of the owner, Walter A. Newman, and visited said place quite often (R., 86), said that at his earliest recollection the Willow Point bar had extended out from the mainland one and one-half or two miles; that the bar started right where it joined the bank (R., 87).

Mr. Purnell was born in 1866 (R., 259), moved to the Purnell plantation, on the Mississippi River opposite and directly east of Island 98, in 1880 (R., 260). He remained at this place from 1880 to 1897; that he hunted on Island 98 hundreds of times; that when he first knew the Island the *main channel* of the river was immediately west of Island 98 (R., 261). It could not, therefore, have been through the little chute mentioned. He further said there was a towhead building up on the Louisiana side (R., 265).

Captain De Lahunt was 70 years old (R., 288). He was licensed as a pilot on the Mississippi River in

1879 or 1880 (R., 289); made three daylight trips per week (R., 290), passing up and down the stretch of the river in controversy (R., 291). The channel was west of Island 98 with the current *against the island* (R., 292-293).

Therefore, the testimony of the defendant's witness Townes that when he first went to the locality in question, which was in 1880, that the little chute which is shown to have been south of Willow Point, running up to Hendersons, was the main channel of the Mississippi River, is clearly erroneous.

The witness for defendant, Mr. Etna J. Albrittain, who is claiming part of the land in controversy, made his first trip to the vicinity in question to look it over in July, 1912. (This was after the avulsion in the high water of 1912.) The steamboat which he was on left (what he pleased to call Tullos Island, or Island 98) the island to the left of us. At this time he went over the island part of the land. At this time the water was flowing on both sides.

From this testimony he did not visit the vicinity of what is locally called St. Francis Chute at this time. The next date he could recollect as having visited this property was in the fall of 1923. (R., 242.)

This witness further testified that along the old channel of 1823 (1824) down next to Hendersons the water was about 200 yards wide; that Chart 47 shows the channel about 10 feet lower than the land on either side. He said they thought by going up the old river bed they could surround the water that was backed into the channel, but could not, as they found water all the way to where it went into the river at the north. (R., 246-245.)

However, the witness also says: "Well, after a dis-

tance of a mile north of Hendersons, *there was no discernible bank line on the west.* (R., 246.) Comment: The first place below Willow Point is Bell Plantation formerly owned by Mrs. M. G. Foster. This place was more than one mile across, and "Hendersons" is the next place below same, so that by the time the witness reached Willow Point he found no discernible bank line.

Mr. Beard, being asked as to the property south of Willow Point, said he thought it was the Bell Plantation belonging to a Mr. Foster. (This was not Mr. R. E. Foster who testified.) (R., 92.)

The entire testimony, maps and surveys show that if there was any depression left where Willow Point bar joined the mainland it was very small.

By examining Complainant's "Exhibit A", being township survey of T. 19 N., R. 13 and 14, showing the original bank line of Louisiana, as shown by the Government land survey of 1824, it will be seen that the course of the river for several miles just north of the property in controversy is just a little south of east, the course being *almost east*, and that it turned Willow Point in a sharp angle south. This necessarily caused the current to flow against the western part of Tullos Island, or Island 98.

Complainant's "Exhibit G", showing the Louisiana bank line of 1866, does not materially change the condition in this regard existing in 1824, except that some caving had taken place along said north line of Willow Point, but very little.

By an examination of the various charts of the survey of 1882, it will be seen that the general course of the river north of Willow Point was still almost east, with a slight trend toward the north, and that it had

cut away most of Tullos Island, or Island 98, particularly the southwestern part, and that the channel then flowed against the southwestern part of what was left of the island.

In addition to the surveys, Mr. Beard says there was caving on the northern part of Willow Point Plantation (R., 89-93-94); that the channel at this point ran east (R., 90). It had been caving on the north side ever since he could remember. *It was a gradual caving* (R., 94).

This testimony is referred to to show that for the river between 1824 and 1882 to have made an avulsion through the little chute, locally called St. Francis, or at any place through where Willow Point or bar now is, the river must have made such cut-off at a right angle to its course, which is beyond the realm of probability. However, as the river at the lower end of sec. 4 never went west of the Louisiana bank line of 1824, and as the surveys of 1866, 1870 and 1882 show that the greatest distance the river had moved east from the time of one survey to the time of the next was only 1,245 yards, being less than three-fourths of a mile, and *if not less than the width of the river, approximately its width*, conclusively demonstrates that between said periods there could not have been an avulsion of the river at this point through Mississippi territory, so as to throw a portion of Mississippi territory west of the river, onto which the land in question could have built.

It is shown that the channel was on the Mississippi side east of the land in controversy, and that islands and bars only build where the current slackens so that silt may deposit. Therefore, the claim of the State of Mississippi that complainant has failed to

show that such an avulsion had not taken place is not well founded, and this point must be decided against it.

Defendant has made the point that complainant must bring itself within the rule governing riparian proprietors, and that the complainant cannot recover, unless it has shown that the accretions attached to the bank.

Defendant is mistaken in this contention. In Louisiana the State owns the channel to the center of the stream.

It is immaterial whether the formations of land attached to the bank as accretion or formed west of the center of the channel as a sand bar or island, as all islands, towheads or sand bars which form in the river west of the channel belong to the State of Louisiana, as well as accretions that may attach to them.

Since the starting date, 1823, is over a hundred years ago, and since 1882 is over forty-five years ago, it is manifestly impossible to furnish the testimony of eye-witnesses to the changes which took place on the Louisiana shore line between 1823 and about 1876, the date when complainant's earliest witness was familiar with the locality; and since between 1824 and 1866 there is no record of any surveys of the Louisiana shore line in the vicinity of Willow Point to which the accretion claimed is attached, it is likewise manifestly impossible to furnish documentary evidence showing same, prior to the survey of 1866. However, by comparing the surveys of 1824 and 1866, it is shown that the change in the river east of Willow Point, between the dates of said surveys, at the point of greatest extension, was only 439 yards, in an east-

erly direction. It is manifestly impossible that an avulsion could have taken place at this point between these dates.

A careful examination and comparison of the lines as established by surveys in 1824, in 1866, in 1870, and in 1882 enables us to calculate and show by comparison and deduction that the easterly extension of the Louisiana shore line from Willow Point toward the Mississippi shore was so gradual as absolutely to negative the suggestion of the State of Mississippi that at some unknown and unrecorded time subsequent to 1824 there had been an avulsion whereby Mississippi territory was thrown west of the channel, and that the accretions attached thereto were Mississippi territory.

ACCRETIONS.

Defendant, in its brief on Exceptions to the Master's Report, on page 11 says:

> "Complainant's proof tending to show that the change in the channel of the river between 1823 and 1882, was the result of accretion, and not of avulsion, is supported only by one witness, C. H. West. His testimony is based upon two maps, one made in 1866, and the other in 1870." * * * was a survey of what is known as Hopkins' Island, as it existed in 1869-1870. Complainant's "Exhibit B.B." (R. 148.)
>
> "With these maps as the only facts before him, the witness undertakes to give a history of the change in the river during this period of time, expressing his opinion that the river progressively moved eastward, and that the Louisiana shore line followed it, being built by accretion."

We will let Cap't West answer this question; his testimony, in part, is as follows:

> Now, as the Bend caved eastward into Mississippi the river maintained about the same width at all times. The accretions from the convex side formed just as the caving eat away the bank on the concave side. (R. 144.)
>
> Q. Now, I notice in these points projecting out here, you have got the word "accretion" written on there. Where did you get the data to write that in?
>
> A. By following the charts, as the Mississippi shore receded by caving, and the Louisiana shore followed it up by accretions, the river remained at approximately the same width to whatever position it had. For instance, you take the chart of 1882, of the Mississippi River Commission, shows the accretions out beyond the shore line, the Louisiana shore line of 1824, and beyond the shore line of the survey of 1866. Just a gradual building out. That is characteristic of the Mississippi through the lower valley, that *it maintains about the same width all the way.*
>
> Q. As I understand you the word "accretion" is written in there as a result of your opinion from your study of these maps and charts about which you have testified, and not from any data shown on the government survey as accretions?
>
> A. No, sir; they are shown on the Chart of 1882, following out on Willow Point as Albemarle Bend receded east, and they are shown the same on chart of 1913. Now, as I say, the survey of 1894 only shows the bank lines.
>
> Q. Well, now, Captain, does not the chart of 1882, showing the point that you have got marked "accretions," as composing Island No. 98 in Section 21, and the land south of Section 16 in Section 21?
>
> A. Let me see if I understand you.

Q. The question I asked you, you have the word "accretions" have you, marked in Section 21 and some in Section 17? (R. 155.)

A. Yes, sir; the river having moved eastward.

Q. Now, I want to ask you this. As I understood you you said you got that data from what was shown as accretions in the survey of 1882. I want to ask you if the chart of 1882 did not show that Section 17 was out on the bank; Section 21, or a part of it at least, was a part of Island No. 98, and Section 16; all the north half of the north part of Section 16 was out on the bank?

A. In what year?

Q. In 1882?

A. In 1882 a part of 21; a part of 28 were on the bank to the east of the Mississippi; yes, sir.

Q. And Section 16 and Section 17?

A. Nearly all of Section 16 and a little more than half of 17 were also on the bank east of the Mississippi.

Q. So, if I understand you, if those particular sections were projected or drawn on Exhibit I, and if you used data of 1882, that would show that in 1882 that was land out on the bank?

A. Yes, sir.

Q. Now, going back to my question, then in regard to these accretions put on there, that is your opinion of what happened between 1882 and 1894, and 1894 and 1913, is it not?

A. No; it is a little more than a mere opinion. The chart of 1882 shows accretions beyond the Louisiana bank line of 1866, out for a considerable ways. The chart of 1913 shows accretions going even beyond the Louisiana shore line of 1894. Therefore, the space between those two periods is covered by the chart or the survey of 1913, which shows the accretions throughout. And again, they had to be accretions in order for the river to maintain approximately the same width

throughout all the period of this moving eastward. The volume of the water carried by the river is such that it adjusts the channel to suit the load it has to carry of water. Then, my observations of that land have been quite carefully made since 1898. Prior to 1898 I have been closely observing what the river was doing as I was responsible all that period since '98 for safeguarding against disaster through changes in the river. Now, prior to 1898, and beginning about 1893, I was along that part of the river several times, and my observation was, during that period the river maintained about a given width. Had it been wide and shallow I should have observed it, and had it been wide and shallow the caving would have been slowed up. But being deep and narrow between the bar line and the Mississippi shore was the cause of the rapid caving throughout. So it is not a mere opinion during that lapse of time between the shore lines of 1894 and 1903, or between 1892 and 1894. (R. 157.)

THINGS THAT SHOW THE ACCESSION TO THE LOUISIANA BANK WAS BY ACCRETION.

1st, Complainant's "Exhibit M", being Chart 45 of the Mississippi River Commission Survey of 1882, a small copy of which it attached to defendant's original brief at page 12, shows that in front of Sections 4 and 5 of Willow Point, the bar is highest next to the original bank line of 1824, and that there is a gradual decline to the water's edge. This is shown by the contour line running in regular order from 75 feet elevation at the water's edge to 95 at the bank line.

2nd, If it has been shown that there was no avulsion at this point, through Mississippi territory, that

would be persuasive that the additions were by accretions. At least the additions could not be Mississippi territory.

3rd, It is admitted by defendant, in its original brief, page 12, that between Sections 4 and 5 there had been no change in the Louisiana bank line from 1824 to 1882; and that in front of Section 7 the channel had changed easterly approximately one and a half miles. It had to extend in some way, and as there was no avulsion and no islands formed at this point, the natural conclusion would be that such extension was the result of accretion.

4th, It is shown in R. 144, that the river at this point maintained about the same width at all times. It is further shown that the caving was rapid in Albemarle Bend. For one side to recede and the river to maintain its width, Willow Point would necessarily be added to by accretion.

5th, It is the history of the river that in a sharp concave bend it caves, and on the opposite side, at the convex point it is added to by accretion. The reason is that on the concave side the current is strong, and prevents the silt from settling, while on the convex side there is little or no current, and the silt settles where it strikes the bank and forms accretion.

6th, The testimony of George R. Newman shows the bar to Willow Point, or Newman's Towhead, to have been added by accretion. It is as follows:

> Q. How far was it from the main land to the end of the timber towards the Mississippi River when you can first recollect?

A. How far was it from the end of the timber to the Mississippi River?

Q. From the main land over to where the timber stopped growing?

A. About a mile and a half I reckon across the bar.

Q. How far out would the bar extend, as well as you recollect, beyond the timber, that part that had no timber on it?

A. Well, there was a depression that had no timber on it, and that was very narrow, and then there was a bunch of timber there, and from that out I reckon it was about a mile.

Q. How far was it from what you have termed the main land out to the water's edge, as well as you can recollect?

A. About a mile and a half. Something like that. Maybe a little more, as near as I can remember. I did not pay any attention to it then.

Q. Did or not the bar extend in an easterly or northeasterly direction towards the Mississippi shore after you can first recollect?

A. Yes, sir; it did all the time further over over here.

Q. And got larger and larger every year?

A. Yes, sir.

Q. Was it a continuous bar all the way out?

A. Yes, sir.

Q. Could you walk from the main land at all times out to the river?

A. Yes, sir.

Q. How long did that condition exist?

A. How long did it exist, did you say? How long did it exist?

Q. Yes, sir; how long did it exist during your recollection?

A. Up until '12.

Q. 1912?

A. 1912, when it caved off—cut off. (R. 68.)

Q. Before the cut off in 1912, could you have

walked out over the entire bar to the river's edge?
A. At any time except in high water. Real high water. (R. 69.)

It was the opinion of the Special Master that the physical facts, surveys and plats corroborated the testimony of the complainant, and at the top of page 13 of his report he found as follows:

> "Therefore, without regard to the oral testimony, to be hereinafter referred to, I have no difficulty in reaching the conclusion from the documentary evidence, that up to 1882 the change in the location of the river, and of the boundary line, had been produced by erosions and accretions, and not by avulsions."

Complainant contends that the evidence sustains the above finding by the Special Master.

II.

If defendant failed in its first contention, its second contention is as follows:

> "That Tullos Island did not wash away, but that the channel around the island changed from the west side to the east side thereof, the old channel filling up until the island became connected with the Louisiana shore * * *."
> (Defendant's Brief on Exceptions, page 56.)

Complainant disputes the above contention and claims that Tullos Island entirely disappeared, leaving no Mississippi territory west of the channel at this point to which accretions could attach, making same Mississippi territory.

Did Tullos Island wash away?

WHAT SURVEYS SHOW.

It is admitted that Tullos Island, or Island 98, was Mississippi territory, and that at the time of the first Government land survey, was composed of parts of Sections 20, 21, 28, nearly all of 29 and part of 30, in T. 9 N., R. 8 W., according to what is known as the land survey in the Choctaw Session. (R., 135.) Also see map in Complainant's Second Supplemental Brief, page 52.

There is no dispute of the fact that in 1882, all of this island had washed away, except a part of Section 21, and a small part of 28. See Complainant's "Exhibit M" and map in Complainant's Second Supplemental Brief, page 52.

The survey shows that between 1823 and 1882 Tullos Island, or Island 98, had caved away on its western side, more than one mile, and on the southern part more than one and three-quarters miles, and that the bar on the opposite side of the river, at Willow Point, had advanced at about the same distance. (Complainant's "Exhibit M" and map attached to Complainant's Second Supplemental Brief, page 52.)

This fact is easily determined by taking charts of the surveys of 1823 and 1882, reduced to a common scale, and taking tracings from the 1823 survey and placing same over the 1882 survey.

Such tracing will demonstrate that the caving was all along the western side of the island, but greater at the southern end. This is apparent to the naked eye, from an examination of the surveys. The lower end of the island in 1823 extended west nearly to the center of Section 30, while in 1882, the lower end was more than a quarter of a mile east of the eastern

section line of Section 28, a distance of at least one and three-quarters miles. (See map page 52 Complainant's Second Supplemental Brief.)

This physical fact is a mute, but unanswerable, argument to show that the current of the river was directed against the western side of the island, but more at the lower end.

This would follow, as the evidence shows that the river at this point maintained about the same width. (R. 144).

It follows that Newman's Bar, in 1882, necessarily occupied a part of the place formerly occupied by Tullos Island, and according to the evidence and surveys, the part so occupied was at least from one mile to nearly one and a half miles, while less than one mile in width of Tullos Island was left. (Complainant's "Exhibit M" and Second Supplemental Brief, page 52.) Even all of this was not the original island of 1823, as it had been added to on the eastern part by the partial filling up of the old chute between the island and the main Mississippi bank. The surveys of 1823 and 1882 compared, show this. (See illustration attached to Complainant's Second Supplemental Brief, page 52.)

WHAT PHYSICAL FACTS SHOW.

Until 1894 the caving north of Willow Point was gradual, and had been so for more than fifty years. This is shown by the testimony of I. B. Beard. He said the caving had been going on ever since he could recollect (R., 94), which was fifty years. (R., 56.)

It would follow that the current of the river which was against the southwestern part of Tullos Island in 1882, was gradually brought up more against the

whole western side, and with this more direct force of the current against the island that it would cave more rapidly. The survey of 1894 shows that the northwest corner entirely disappeared first and at the date of this survey the bar from Louisiana had extended over same, while the balance of where the island had been was then in the channel. (Complainant's "Exhibit C" and R. 138, 140, 144.)

It is shown that the territory involved is in the Delta, or alluvial sections of Louisiana and Mississippi, and the evidence showed that the main banks, when the current was against them, washed away with great rapidity, whole plantations caving into the river, in a comparatively short time.

Any islands formed in the river, or added to, or built larger by silt from the river, would likewise disappear with great rapidity when the channel and current was thrown against them.

The channel was thrown against Island 98, or Tullos Island, and also the Island or High Sand Bar adjacent to Island 98, and extending northward, with all of its force, and they would disappear just as fast as the main bank.

There was only a comparatively small part of Tullos Island left in 1882. (See map in Complainant's First Supplemental Brief, page 52.) That much of this small part had disappeared between 1882 and 1892 is certain.

By an examination of the various charts and maps of surveys of this reach of the river, it will be seen that the river gradually swung around from a course a little west of south to a southern course, and then to a southeastern course, thus bringing the river around against the island like the slow circular move-

ment of a searchlight, until the full force of the channel current was brought direct against it. The nearer to a right angle the river strikes the bank, the greater the caving.

Capt. West said—From 1882 the caving (in Albemarle Bend) became more rapid. It was known as one of the most rapidly caving bends on the Mississippi River. (R. 141.)

Then with the channel current, after 1882, almost at right angles against the small strip of Tullos Island that was left after 1882, and it being soft alluvion, it would seem beyond human credulity that it would withstand all the force of the Great River, and stand there like the Rock of Gibraltar to be added to by accretions on its western side until it attached to the Louisiana shore.

The Special Master has expressed this idea so forcibly we herewith copy a paragraph from page 37 of his Report, to-wit:

> "Had a very small part of Island 98 remained as claimed by defendant, that part was so insignificant that it is inconceivable that the extensive accretions arising from he erosion of the adjacent Mississippi mainland both northerly and southerly from such remnant of the island (if any remained), attached to that small parcel of land instead of to the extensive bar which moved from the Louisiana shore northeasterly, easterly and southeasterly."

WHAT WITNESSES SHOW.

Testimony of Mr. E. T. Purnell.

He was born in 1866. (R. 259.) He moved to the Purnell Plantation, belonging to his father, and which was on the Mississippi Bank of the river opposite Tullos Island, in 1880. (R. 260-261.)

Q. The W. Purnell place was in the State of Mississippi, was it?

A. Yes, sir.

Q. What water was immediately west?

A. A chute between Island 98.

Q. Where was the main channel of the river?

A. *West of 98.*

Q. How long did you live at the place marked "W. Purnell" on the map?

A. I was there from *1880 to 1897*, in January.

Q. Continuously?

A. Well, a few months may have intervened.

Q. Well, I mean you lived there? (R. 262.)

A. Yes, sir; that was my home.

Q. When you first knew Island 98 you say the deep part of the channel of the river was on the ***west*** side of the Island?

A. Yes, sir.

Q. Next to the Island or next to the Louisiana shore, Mr. Purnell?

A. *Next to the Island.*

Q. When did you first observe the island on the western side caving, if it ever caved?

A. The *first time that I ever crossed the island* to the other bank. I don't know the exact year, but it was in my younger days.

Q. Before you were grown?

A. A long time before I was grown. Probably it was *when I was ten years old.*

Q. It was caving then?

A. Yes, sir.

Q. Do you know whether or not that caving continued?

A. To the best of my knowledge it did.

Q. You lived opposite the island, I believe you said, Mr. Purnell?

A. Yes, sir.

Q. Do you know whether it did or not?

A. I am confident it did. Yes, sir; it did.

Q. It did?

A. Yes, sir.

Q. Do you know whether or not the island ever entirely disappeared, Mr. Purnell?

A. Yes, sir.

Q. Do you know about when it disappeared?

A. Either in 1894 or 1895, during the high water of either one of those two years, but I am not positive. It was during one of those two years, during the high water. But, as I say, I am not positive which.

Q. Did you say that it disappeared or not?

A. It did. (R. 264.)

Later the witness said the Island disappeared in 1893, 1894 or in 1895. (R. 282.)

Q. Then, how did it disappear?

A. It washed out entirely.

Q. There was not a vestige of it left, of any sort?

A. No, sir.

Q. Up to the time of the disappearance of that island,—of the complete disappearance of that island, where was the main channel of the river? (R. 265.)

A. It was to the *west of the island.*

Testimony of Cap't Joseph V. De Lahunt.

He was a witness for complainant. He was 70 years old in 1926.

Q. What is your profession or occupation?
A. Pilot and captain.
Q. Pilot and captain on what waters?
A. From Cairo to New Orleans.
Q. On what river?
A. The Mississippi River.
Q. In what service are you?
A. Working for the Government in the Second District, pilot and captain of a boat.
Q. Headquarters United States Engineer's office there?
A. Yes, sir. (R. 288.)
Q. About what age were you when you became a licensed master and pilot on a boat on the Mississippi River?
A. I got a license in '80—I think it was either '79 or '80.
Q. Either 1879 or 1880?
A. Yes, sir. (R. 289.)
Q. I point to you on that map an island indicated as Island No. 98. Please state whether or not the boats on which you acted as master or pilot during the whole of this time passed up and down by Island No. 98?
A. Yes, sir; passed *to the west side of 98.*
Q. In the discharge of your duty as a pilot, state whether or not, as the case may be, it was your duty to observe and note changes *in the islands, bars and the channels of the river?*
A. Always. Always take note. * * *
Q. What became of Island 98?
A. It disappeared *absolutely.*
Q. Was any of it at all left?
A. No, sir; *not a bit.*
Q. What was the occasion for it to disappear?
A. The caving banks. It started to cave at the head and just kept on chipping away and caved all away. In 1897 *I run right over the top of the island with a loaded steamboat.*
Q. Over the top of what?

A. Over the top of the place where 98 was.

Q. Was there any trees to indicate where that island was at that time?

A. No, sir; not at that time there was not.

Q. What became of them?

A. They *just went to China, I reckon.* (R. 292.)

Q. When Island 98, which you say disappeared, was in existence, *where did the channel of the river run* with reference to the island *and Hopkins' Tow head you refer to?*

A. It run to the west of the island when it was there.

Q. Which island?

A. Island 98.

Q. West of Island 98?

A. Yes, sir.

Q. With reference to Hopkins Island, or Hopkins' Tow head, did the channel run east or west of that?

A. *Run east of it.*

Q. East of that?

A. Yes, sir.

Q. The channel, as I understand your statement, run east of the Hopkins' Towhead and to the west of Island No. 98, is that right?

A. Yes, sir.

Q. And between the two?

A. Yes, sir.

Q. On which side of Island 98 did the caving take place, Captain?

A. On the outside—*the west side.*

Q. The west side?

A. Yes, sir.

Q. The west side of Island 98, as you say, chipped away,—as it chipped away, what changes, if any, took place on the Louisiana side of the stream?

A. Well, it filled up over there. (R. 293.)

Q. State whether or not during the process

of the caving of Island 98 was it easy or difficult to land your boat there?

A. You could not land at all. I never did land at Island 98 in my life.

Q. Why could you not?

A. Because of the snags and the trees and things there. It was dangerous to land there.

Q. A boat could not land there?

A. No, sir. A boat could not land there without taking big chances on sinking.

Q. What do you mean by these snags and trees?

A. Big timber in Island 98.

Q. Big timber on the island?

A. Yes, sir.

Q. How would they get into the river?

A. They caved in.

Q. And in '97 or '98 I understand you to say that the island entirely disappeared?

A. Yes, sir.

Q. And there was not a vestige of the island left, as I understand you, Captain?

A. Nothing left of it. If there was I ought to have seen it. I was running up and down there *six times a week.*

Q. Prior to the disappearance of Island 98 you state that the main channel of the Mississippi River *was to the west* of that island?

A. Yes, sir.

Q. What was between that island and the Mississippi shore on the east?

A. There was no channel there at that time. * * * There was no channel there until the island gave away.

Q. Was there a chute there?

A. There was a *little* chute up in there; yes, sir.

Q. What was the width of that chute? (R. 294.)

A. Oh now, it was not very wide.

Q. Was it *navigable for large boats?*

A. No, sir.

Q. Could small boats go up there at any stage of the water?

A. *Not far.* It was all closed up at the head of it. You could land at the foot of it. That is where the landing was, right at the foot of it,—Chotard Landing, they called it, at the foot of Island 98. Island 98 never was a very large island. (He first knew it in 1880.)

Testimony of Captain Chas. H. West, based in part on his personal knowledge, and on the Surveys and Charts of the Mississippi River Commission.

Captain West stated:

"Beginning about 1893, I was along that part of the river (Albemarle Bend) several times, and my observation was, during that period, the river maintained about a given width". (R. 156.)

(The island was evidently gone then.)

Q. Have you stated that Tullos Island, as it existed in 1882, entirely disappeared? If you have not I will ask you the question. Did it entirely disappear? I will ask you the direct question. Subsequent to 1882 did what is (R. 143) or what was known as Tullos Island or Island No. 98, entirely disappear?

A. Yes, sir; it entirely disappeared by the caving, the Bend moving eastward until in 1913, when the survey of the Mississippi River Commission showed the main shore line to be about a mile and a quarter east of the eastern shore of Tullos Island as it had existed. Yes, sir; it has taken Tullos Island, and came the full length of Tullos Island and still further eastward in Mississippi.

Q. Well then, you will now state positively that no part of Tullos Island, as shown here in 1882, is left?

A. Yes, sir; as this Bend progressively eat away the main shore and went eastward, the accretions on the west side followed it up continuously, survey after survey. *Now some of the Commission's charts will show the shore lines* on both sides *every* year. A multiplicity of them would be shown as the river progressed. But these lithographed charts are not made *every* year. They are only made at long periods. They are very expensive to get up, and they show the river for long periods of say from ten to fifteen years apart.

Now, as the Bend caved eastward into Mississippi the river maintained about the same width at all times. The accretions from the convex side formed just as the caving eat away the bank on the concave side.

Captain H. M. Marshall.

He was a witness for defendant.

The last time apparently, that he saw Tullos Island was in 1890. He said:

> "I can state of my personal knowledge that in 1890, four years before the survey was made (the survey of 1894), that Island 98, or Tullos Island, (nor) the island above it, had not been washed away, but were still in existence." (R. 173-174.)

Captain Marshall knew the size of Tullos Island in 1882, and he knew its size in 1890. The defendant did not show what size it was in 1890. Captain Marshall was their witness. Would not the presumption be that had there been much of the island left in 1890, the defendant would have shown it?

From the worksheets of the 1894 survey, Captain Marshall gave it as his opinion that "The island could not have caved away." This opinion is not sustained by the documentary evidence (R. 173), nor by the most credible eye witnesses.

Captain R. E. Foster, Defendant's Witness.

Mr. Foster "*lived right across the river from the island.*" (R. 208-209.)

He had lived there since 1882.

He lived on the Mississippi side of this river; was a member of the Mississippi Legislature. (R. 209.)

Later he said, the river was not at first between his place and the island, but is now. (R. 212.)

Later he said he did not know the size of the island, when he first knew of it.

That it was just across the river from his *lower place.*

No this home place, but his lower place. (R. 214.)

Later he said the island was in front of both his places. (R. 215.)

He did not know how long it was, how wide it was, nor anything about the size of it in 1882. (R. 215-216.)

He had no interest in it, whatever.

He knew it was there then and is now. (R. 216.)

He did not know how much of the island was left.

The island is across the river from his place, about two miles.

He could only tell that some of the island was left by looking across and seeing the timber, a distance of two miles. (R. 217.)

This timber he saw was on the island exactly west from his place.

But he could not tell whether the timber was on the island or the main Louisiana shore. (R. 218.)

Mr. Purnell said Mr. R. E. Foster lived on the Cotton Wood Plantation, 10 or 12 miles (from Island 98). He lived there continuously. (R. 265.)

He very seldom saw Mr. Foster, and he did not visit his section (opposite Island 98) often. (R. 266.)

By examining the chart 45 plaintiff's "Exhibit M," (Defendant's Brief page 12), that two or three miles above Tullos on the Mississippi shore, would make it impossible to look *exactly west* and see Island 98, as said island, from said point is southeast.

The only thing that could have had any appearance of an island two miles west with nothing but the river intervening is Newman's Towhead.

It is therefore clear, that Mr. Foster's testimony is not entitled to much weight. The Master's comment is clearly borne out that "his testimony as a whole indicates a very hazy recollection and lack of careful observation."

Lawrence Towns' Testimony.

The Special Master has so completely shown the incredibility of the testimony of this witness, that we copy his statement relative thereto with full reference to the Record. It is as follows:

> "Lawrence Towns testified in substance that he went to live at Chotard in February, 1880, when he was thirteen years old; that he knew Island 98; that some people called it 'Scruggs' Island' that it was right in front of Chotard and ran below there near the Warren County line; it extended nearly to Brunswick (R., pp. 220, 232.) For ten years he was a roustabout

on Mississippi River steamers beginning when he was about 18 years of age. (R. page 232.)"

"He said that a part of Scruggs Island had been there ever since he had been at Chotard (R., pp. 221-222); that that was the same land as Newman's Towhead (R., p. 239). After the cut-off of 1912-1913 he leased Newman's Towhead with accretions from Rufus F. and Andrew B. Learned. The property was described in the lease as containing about 2,000 acres more or less, known as "The Newman Towhead with accretions, and being a part of Bell and Willow Point Plantations," in East Carroll Parish, Louisiana (R. pp. 226-228). He did not cultivate Newman Towhead but kept 800 or 900 hogs there. He could not say whether Newman Towhead started out from the Louisiana shore but in the next breath said Newman Towhead was never attached to the Louisiana shore by sand bar (R. pp. 228, 237) although he later admitted that the sand bar started out from the Louisiana shore and went toward the Mississippi shore (R. pp. 230-231). He said that the river came through and left the Towhead on the east side towards Mississippi (R. p. 229), and that at the time he was testifying, Newman Towhead was on the Louisiana side of the river (R. p. 237)."

"This witness appears to be of a low grade of intelligence. His testimony is self-contradictory, incoherent and difficult to understand. His is the only evidence in the case that tends to show that Island 98 ever extended southerly to the vicinity of Brunswick or the Warren County line. Complainant's Exhibit M shows the most southerly point of Tullos Island in 1823 was about one mile northerly of the Warren County line. The same exhibit shows that the southerly point of the island as located by the 1882 survey is about a quarter of a mile northerly from Chotard. It will be recalled that the actual survey or

Chart 46 of the Mississippi River Commission shown on Complainant's Exhibit M was made in 1879-80, and the southerly point was caving at that time. It is entirely clear that at the time this testimony was taken, Newman Towhead was east of the river and not on the Louisiana side (Chart 47, Mississippi River Commission 1913-1915; Complainant's Exhibit F; Defendant's Exhibit 6-B).

At one time he stated that he was uncertain whether Newman Towhead started out from the Louisiana shore, but at another time he stated that it was never attached to the Louisiana shore."

Testimony of Etna J. Albrittain.

The first visit of this witness to Island 98 was in July, 1912, which was after the avulsion during the high water of 1912.

He went over what he claims was sections 20, 21 and 28. (R. 241-242.)

By reference to "Exhibit M" defendants original brief page 12, it will be seen that the original section 20 and most of sections 21 and 28 that had ever been a part of the Island had caved away.

By reference to complainants "Exhibits C, D, E, H and M", Survey of 1882, being Sheet 17 of the plats of the said Commission, also shown on Chart 45 of the Mississippi River Commission, there is shown in red solid lines the shore lines of both Louisiana and Mississippi, and in broken red dotted lines, the extension of the bar line connected with the Louisiana shore, according to the survey of the Commission in 1894.

Asked whether he knew of his own knowledge whether Tullos Island had all caved away, he evaded a direct answer, to the question.

He said the largest tree that he measured was 10 feet and five (5) inches in circumference. (R. 252.)

He saw larger trees before he had the survey made but did not measure them. (R. 253.)

Q. Then, if you did not measure other ones how could you tell it was larger?

A. Easy enough.

Q. Are you trying to show that this timber is larger on the island or it is smaller?

By Mr. Butler: He is not trying to show anything. I don't think that is a fair question.

By the Witness: I am trying to answer questions merely.

By Mr. Dale:

Q. Are you interested in this litigation?

A. Certainly I am.

Q. Did you go there to hunt small trees or large ones?

A. I have not been hunting any trees at all.

Q. Why did you measure this cottonwood?

A. Just *because I wanted to see how big it was.*

Q. You did not measure it for the purpose of using it as evidence in this case?

A. I measured it because *I wanted to see how large it measured.*

Q. Yes, sir: my question was, you did not measure it for the purpose of using it as evidence in this case? Or were you hunting for those trees just as a mere matter of curiosity?

A. *I measured it as a matter of information.*

Q. I will repeat the question. Did you or not measure it for the purpose of using the measurement as testimony in this case?

A. *Not purely; no.*

Q. Did you do it at all for that purpose?

A. *I had not had an investigation sole in mind.*

Q. Then, if you did not measure it for the purpose, of using it as evidence in this case, why did you measure it?

A. I told you I measured it *to see how big it was.*

Q. Just simply to see how big—as a matter of idle curiosity to see how big it was?

A. *And for information, as I told you.*

Defendant, in his Exception to the Master's Report, on page 7 says:

> "As stated by the Special Master, in his Report on page 18, 'the testimony in respect to the total disappearance of Island 98, prior to 1894, is very conflicting and difficult, if not impossible to reconcile.' "

Let us begin where the defendant left off and see what else the Master said.

> "Upon the whole, up to 1894 the clear weight of the evidence, both *documentary* and *oral*, is to the effect that the river channel had moved gradually from its position in 1824 to that in 1894; that this change had been produced (page 36) by erosion on the Mississippi shore and accretions to the Louisiana shore; that when the 1894 survey was made all of Island 98 had washed away and the river had cut into the Mississippi mainland a substantial distance; that accretions to the Louisiana shore had followed the river channel and covered the eroded Mississippi territory, including Island 98, up to the Louisiana bar line of 1894 as shown on the survey of that year." (Page 37.)

The Master further found on page 37 as follows:

> "Had a very small part of Island 98 remained as claimed by defendant, that part was so insignificant that it is inconceivable that the extensive accretions arising from the erosion of the adjacent Mississippi mainland both northerly and southerly from such remnant of the island (if any remained), attached to that small parcel of land instead of to the extensive bar which moved from the Louisiana shore northeasterly, easterly and southeasterly.
>
> I, therefore, find and so report that the premises in controversy were formed by accretions to the Louisiana shore between 1823 and the avulsion of 1912-1913."

TULLOS ISLAND DIVIDED INTO TWO PARTS.

Defendant, in its Brief on Exceptions to the Master's Report, on page 3 says:

> "Tullos Island, or Island 98 is shown divided into two parts."

On page 13 it says, referring to Mr. Purnell's testimony,

> "What this witness called Hopkins' Island is shown conclusively by him in referring to map Complainant's 'Exhibit H' to be *Upper Tullos Island.*"
>
> On page 43 the brief says Cap't Marshall states (R. 175) "The mail boat," etc. * * * and then proceeds "showing the width of the chute from the levee over to *Upper Tullos Island.*"

On same page nearer the bottom, he refers to Lower *Tullos Island.*

What Cap't. Marshall did say was as follows:

> "While we were there * * * a boat passed down the main channel, on the western side of both islands."
>
> "There were trees growing on both islands, large cottonwood and willow. There was a swift current flowing down between *the two* islands. * * *"

Cap't. Marshall further said:

> "Exhibit 3, Sheet 17 of the Mississippi River Commission shows that there was *another* island on the Mississippi side of the Mississippi River, Island No. 98, which is the same thing as Tullos Island, the island above that, up stream, on the Mississippi shore."
>
> Q. Was the island up above that, below the head of Island 98?
>
> A. Yes, sir; below the upper end. They overlap. Those two island overlap a little."

By referring to Complainant's "Exhibit G", a small copy of which defendant has attached to its original brief just in front of page 11, it is shown that the original Tullos Island extended very little north of the northern line of Sections 20 and 21 at the time of the original survey in 1823. By referring to Chart 45 of the Mississippi River Commission, defendant's "Exhibit C"; also "M"; also Sheet 17 of the plats of the Mississippi River Commission, a small copy of Complainant's "Exhibit M" being attached to defendant's brief at page 12, it is shown that the island or sand bar above Island 98 extended in a northwest and west direction from about the center of the east line of Section 20 to the west line of Section 13 a distance of about three and a half

miles, extending up the river for at least three miles north of the northern part of Island 98, and overlapping Island 98, and extending south of it about a half of a mile, and east of it about 500 yards.

Not a witness that testified said that this upper island was ever a part of Tullos Island. The defendant evidently relied on Cap't Marshall's testimony to show that there was an Upper and a Lower Tullos Island; but, Cap't Marshall, speaking of Island 98, referred to the other island as *another* island above Island 98. If there was another island, it could not be Island 98. It could not be *another* island, and at the same time be Island 98, unless by some mysterious influence it had the characteristics of a "Dr. Jekyll and Mr.Hyde."

The wish of the defendant for two islands, that there may be a second, after the first is shown to have been destroyed, cannot, in a court of justice, take the place of evidence.

THE PROBABLE WAY THE ISLAND AND SAND BAR ABOVE 98 WAS BROUGHT INTO EXISTENCE.

The testimony of Captain West shows as follows:

> Q. Explain what you mean in connecting Hopkins' Island with Willow Point.
>
> A. What I mean by its connection with Willow Point is the distances and direction from a given point on the Louisiana side of the original survey on the Louisiana side with Hopkins' Island in order to locate it in its proper position to the Louisiana land survey. This chart shows the Mississippi shore line to be about one mile east of where it was in 1823, and of that part of Tullos Island which lay in Sections 20, 29 and

30, had crept into the river, and only a part of that which lay in section 21 and 28 existed at that time. In 1870, at the time Hopkins Island was sectionized as a part of Louisiana, the main shore line opposite Hopkins Island was about *3,000* feet further inland than it was at the time of the Commission's survey of 1882 and a channel of the Mississippi River in 1870, passed between Hopkins' Island and the main shore, as it existed in 1870, as is shown by the Government land survey chart of Hopkins' Island, marked "Exhibit BB." After 1870 the river in the bend northeast of Willow Point began to move in a southwesterly direction and built out the Mississippi shore a distance of about *3,000* feet, so that in 1882 the Mississippi shore line of the river *was along what had been the eastern boundary of Hopkins Island*, and the channel of the river, at that date, 1882, was over the position that had been occupied by Hopkins' Island in 1870, having destroyed all of the island except a very small part of the southwestern extremity of the same. (R. 140.)

This will be more clearly seen by Complainant's "Exhibit H," showing the survey of 1882 a small copy of which appears in defendant's original brief at pages 60-61.

You will note from this plat on which Hopkins Island is shown that the Mississippi shore line had extended west to the eastern line of Hopkins Island, and all of Hopkins Island, had been cut away by the river except a little corner in lots 3 and 5, and that such little corner had been united with Newman's Towhead, or if that too had been cut away that the Newman's Sand bar extending out from the Towhead, covered the place where this part of Hopkins Island had been.

This survey of 1882, the map being shown at pages 60-61, of defendant's original brief, shows that the island defendant called upper *Tullos Island*, was in fact a high sand bar, which had greatly extended by accretions to the west, until the whole bar was about 4 miles long.

Captain West's testimony was to the effect that as the river extended to the south cutting away the northern part of Willow Point, and above the accretions to the Mississippi shore, followed it, and this is no doubt what formed the sand bar. (R. 140.)

Defendant also shows this on its "Exhibit 6 F", of survey of 1882 attached to page 46 of its original brief, showing on the sand bar 90 feet elevation and the high bar below to which the sand bar attached to be 100 feet elevation. The channel was then about parallel to said high sand bar, but struck the lower part of Island 98 almost at right angles.

Now owing to the fact that said high sand bar was not in existence in 1823, (See defendant's Exhibit 2 attached to its original brief after page 10) we think it demonstrates that this high sand bar which defendant calls upper *Tullos Island* was not in existence until some time between 1823 and 1882.

The map at pages 60-61 of defendant's original Brief, and Captain West's testimony R. 140, shows that the Mississippi shore line in 1882, had extended to the eastern location of Hopkins Island in 1870.

DID THE RIVER PRIOR TO THE 1894 SURVEY, CHANGE ITS COURSE FROM WEST OF ISLAND 98 TO THE EAST THEREOF, LEAVING A PART OF THE ISLAND INTACT?

Plaintiff's "Exhibit C", shows the survey of 1894, superimposed on the chart of survey of 1882, a small copy of which is attached to complainants 2nd Supplemental Brief, at page 53, and a larger copy is also attached to defendant's original Brief at page 39.

This same survey is shown on Complainant's "Exhibits C, D, E, F, H, I and M", and Chart 45, also Sheet 17 of the Mississippi River Commission Plats. (R. 140-148-152-153-160.)

Capt. West, referring to Complainant's "Exhibit C", said:

> A. This chart shows the Mississippi River as it existed in 1882, in black lines and symbols. There has been drawn on this chart, in red lines, two banks of the Mississippi River, made from a survey by the Mississippi River Commission in 1894. These red lines were superimposed upon this chart of a survey of 1882 by the Mississippi River Commission. In other words, these red lines were put there by the Commission in the central office.
>
> Q. I note some red, broken lines on this same map, Captain West, and I will ask you what they represent?
>
> A. On this chart is a broken red line. These broken lines represent the edge of the bar at the time of the survey, all of which is explained in print upon the face of the chart.
>
> "Exhibit D" is the same as "Exhibit C" with the addition of the shore and the bus lines of the Commission's survey of 1903. (R. 138.)

By examining "Exhibit C" and "Exhibit M" you will see that parallel of latitude 32° 37′ crosses Willow Point at about the middle of Section 4; the sand bar and accretion to Willow Point leaves from against the main shore line of the land surveyed in 1824, and later known as Willow Point; that this bar line extends from said point in a course slightly north of east, and strikes and crosses the sand bar which was above Tullos Island, crosses it and the chute beyond, and extends some distance into what was Albemarle Plantation in Mississippi, owned by John Chilton, then curves to the south, cutting off the northwest corner of what was left of Tullos Island in 1882, and extending in a southwest direction, to just in front of Chotard Landing, about a half of a mile below Tullos Island as it existed in 1882, and continuing on down, say 300 yards from the Mississippi shore line of 1882 to Brunswick Plantation a number of miles below Island 98 as it existed in 1882.

Another red line representing the shore line of Mississippi, in 1894, crossed over into what was Louisiana in 1882, just West of Edgewood Landing, and ran through what was Louisiana Plantation in 1882, again striking the river as it existed in 1882, at what was Pecan Grove Landing in 1882, some distance above Willow Point. It crossed the river just above what was Duvall's Landing in 1882, and ran through Ingomar, of C. Smith, Albemarle, Higgins, Purnell, Ingomar of R. O. Brown, Kiger, and reached the location of the 1882 river, and Terrapin Neck Cut Off, considerably below Brunswick Landing, thus placing within the river a considerable part of what had been Mississippi territory in 1882. This shows that the cutting away of Mississippi territory not

only extended some north of Tullos Island as it existed in 1882, but for a much greater distance south.

This bank line of Mississippi and bar line of Louisiana places nearly all of the location of Tullos Island as it existed in 1882 in the channel of the Mississippi River, as it existed in 1894 and the balance covered by accretions to Louisiana.

Defendant, in its brief on the exceptions to the Master's Report, page 42, says:

> "Complainant's 'Exhibit C', Mississippi River Commission Sheet 17, is merely a small scale 1 inch equal to 1 miles, for *non-technical use*, made by reduction from charts 45 and 46 of the Survey of 1882, on a scale of 1 to 20,000, which is a little more than 3 times larger than the smaller sheet."

It is true that the scale is a little more than three times smaller than the larger maps, and there would not be room on the smaller map to go into all the details that could be placed on a larger map; but there is not the slightest reason why any competent person could not delineate correctly on the smaller map, the bank lines and the bar lines. And if, in 1894, nearly all of Island 98 was in the channel of the river, the Mississippi River Commission, which superimposed the survey of 1894 on the plat of 1882, knew at the time whether Island 98 was in the channel, and if they so show on a plat made at the time, it seems entirely reasonable to conclude that they knew what they were doing, and that while the results obtained from their work sheets were fresh in their minds, that they could show same on a plat, as nearly correct as is possible.

They certainly could do so more accurately than some one else, who had not seen the bar lines on each side of the river, and who attempts 32 years later to take those work sheets and determine same.

The Commission certainly knew, at the time of the survey of 1894 whether Island 98 had entirely disappeared, and whether the bar line from Louisiana had extended over a part of the place occupied by Island 98 in 1882.

More certainly must this be true when the Commission superimposed the result of the findings of the Survey of 1894, on top of the Chart of 1882.

This superimposed chart of 1894, on that of 1882, is equivalent to the written testimony of the entire surveying staff of the Mississippi River Commission, that all of what had been Island 98 in 1882, had disappeared, and that most of the 1882 location of the island was in the channel of the river in 1894, and that the location of the small part not in the channel in 1894, had been covered by the extension eastward of the sand bar from Willow Point. If the superimposed chart does not mean this, then the Commission made a mistake in making their chart.

Captain West, the civilian engineer, member of said Commission, has told you no mistake was made, and he said he could say positively that Island 98 had entirely disappeared at the time of the Survey of 1894.

If such testimony as the above needs any corroboration, it would seem that two disinterested witnesses, such as Mr. Purnell and Cap't De Lahunt, who both swear positively they saw the island as it disappeared, one of whom lived right in front of it, and the other saw it six times a week, would certainly be a sufficient corroboration.

By an examination of the chart under discussion, the survey of 1894, it will be seen that most of the upper part of the sand bar above Island 98 was in the channel of the river in 1894, and that all of it south and west of the river had disappeared and the place it occupied in 1882 had been covered by the sand bar extending out from Willow Point, Louisiana.

It will further be seen that a small part of the sand bar, just south of Dunbarton Landing, Mississippi, was left on the Mississippi side of the river, and in 1894 was Mississippi territory, and still is Mississippi territory, unless it has since diappeared.

Defendant's contention, as shown by his Exceptions to the Report of the Master, on page 7 thereof, is to the effect—

That between 1882 and 1894, the river left its channel on the west side of Tullos Island, and went around north of what was left of Tullos Island and came down the old chute east of it, scouring out the chute, and making a new channel there.

Is this even plausible?

In 1882, there was little left of the original Tullos Island, probably not one-fifth. The caving was more rapid after 1882. In 1890, when Cap't Marshall last saw it, it must have been cut away to a very small strip. The channel from 1882 was constantly moving further east. Therefore, in the latter part of 1892, ten years later, the channel, as it existed in 1882, had probably moved east into the eastern part of Section 21.

For the theory of defendant to be correct, the river must have left its deep channel just west of the little

strip left of Island 98, run out east a little distance at the north end, and forced its whole channel down through the little chute, east of 98, and to have at once turned a little west of south, scoured out a new channel, without disturbing that little strip of 98.

Would it not take very convincing evidence to persuade any court to believe that such thing happened?

When a channel passes from one side of an island to the other, the principles of avulsion apply.

One alleging avulsion, or a change in the river affecting the boundary line, must prove it, whether complainant or defendant.

See cases cited in defendant's brief in opposition to the Master's Report, at pages 52 and 53, shown in Syllabus in this brief.

Defendant, having set up this change or avulsion, as a special defense, must prove same by a preponderance of the evidence.

WERE NEWMAN'S TOWHEAD AND TULLOS ISLAND THE SAME, OR WERE THEY DIFFERENT PROPERTIES?

Newman's Bar and Tullos Island.

Is it true, as alleged by defendant, that what complainant calls Newman's Towhead is in fact Tullos Island, in paragraph five, sub-paragraph five, of its answer?

Complainant contends such is not the fact.

The evidence clearly establishes that, after the disappearance of Tullos Island, or Island 98, Newman's Towhead built up on Newman's, or Willow Point Bar. (R. 25 to 29, 268, 269.)

If Tullos Island and Newman's or Willow Point Bar existed at the same time, and were distinct properties, on opposite sides of the river, and Newman's Bar never disappeared, but still exists, then defendant's contention in this regard is unfounded.

1st. Did they both exist at the same time?

2nd. Were they on opposite sides of the river?

3rd. Did Newman's or Willow Point Bar ever wash away?

1—*Did Both Exist Simultaneously?*

There is no dispute that Tullos Island existed in 1882. Captain Marshall says there was some of it there in 1890. (R. 173.)

Newman's or Willow Point Bar existed at the same time.

Mr. Beard said at the earliest time he could recollect (1876) Newman's Bar (on Louisiana side) had extended out from the mainland a mile and a half or two miles, or something like that, and continued to grow each year afterwards (R. 87). A towhead subsequently formed on this bar, and grew year by year, getting *higher and higher.*

Defendant's Original Brief, page 12, admits that the bar had extended eastward one and a half miles in 1882. (See R. 86, 103, 259, 269.)

2—*Were Tullos Island, or Island 98, and Newman's Bar on Opposite Sides of the River.*

It is admitted that Tullos Island, or Island 98, was in the State of Mississippi, on the east side of the

river; Newman's Bar on the opposite side of the river from Tullos Island, or west side. (R. 27, 52, 53, 89, 104, 105, 238.)

3—Did Newman's Towhead Wash Away?

Newman's Towhead never washed away. (R. 27, 30, 52, 68, 69, 70, 105, 106, 108, 109.)

We submit that there can be no doubt that Newman's Bar and Tullos Island existed at the same time, from prior to 1880 until about 1893; that they were *distinct properties, one on one side of the river* and the other on the opposite side; that Newman's Bar, attached to Willow Point Plantation in Louisiana, was Louisiana territory. If Newman's Towhead existed prior to 1912 it could not have washed away, as it was on the convex bank of the river.

The surveys show that what was a bar attached to Willow Point extended and covered a large part of the place formerly occupied by Tullos Island, or Island 98, in 1823.

It is certain that the bar and towhead did not cave away prior to 1912. It is certain it did not do so afterwards, and therefore still exists. If this property is Tullos Island, what became of Newman's Towhead?

ERROR OF COUNSEL FOR COMPLAINANT.

Cap't. West, speaking of the survey of 1894, said the survey did not take in the topography. It only took in the change in position of the river alone, and the survey was platted on the Charts of the 1882 Survey. (R. 151.)

It was something of a re-survey, (not) a general

survey with all of the details of topography, as they were merely studying the changes that had taken place in the river itself, and that was platted in red lines (on 1882 Chart) so as to bring it out boldly.

From this testimony, counsel for complainant understood that the topography even between the river banks had not been taken.

After complainant received Defendant's Original Brief, counsel went to see Cap't. West, to ascertain whether they were mistaken. He informed counsel that they were mistaken.

Counsel for complainant then took a written statement from Cap't. West, which was inserted in Complainant's First Supplemental Brief, pages 28, 29 and 30.

In January, 1929, at the hearing before Special Master Haight, counsel for complainant requested permission of the Master to take Cap't. West's testimony, whereupon counsel for defendant agreed in writing as follows:

> "That the questions and answers of Cap't. Chas. H. West, as shown on pages 28, 29 and 30 of Complainant's *First* Supplemental Brief, be received in evidence herein, with the same effect as if he had been testifying as a witness." (Second Supplemental Brief, page 30.)

Complainant refers the court, for these answers of Cap't. West to its First Supplemental Brief, pages 28, 29 and 30, instead of repeating them here.

ELEVATIONS ON WORK SHEETS REFERRED TO BY CAPTAIN MARSHALL.

Referring to Captain Marshall's testimony, Exhibit 4-A, 4-B, 4-C, giving the detail tracing of the United

States Engineers' survey of 1894, he lays stress on the fact that, in the upper right-hand corner of the sheet, contour lines are shown, indicating a height of one hundred and ten (110) feet, Memphis datum, and that on said place is marked "Willows."

In his Exhibit 4-D, he has shown these contours, but in place of the word "Willows" he has substituted the word "Timber," which is an apparent alteration of the work sheet from which Defendant's Exhibit 4-D is said to be made up. This would be misleading, for the reason that "Timber" conveys the idea of large trees. Referring again to Exhibit 4-A, B, C, in other locations on the same work sheet, appear the words "Switch Willows," "Willows," and "Large Willows." The words "Large Willows" will appear on what is seemingly the older or higher bank. Had the timber, on the high points now being discussed, been large timber, the engineers' would presumably have so marked it, as they did in other places. On what is undoubtedly the old bank, being the shore line of 1882, timber is described as "Willow" and "Cottonwood," indicating that the word "Willows" is used usually for the smaller or younger timber growing on the bars. This interpretation is further sustained by Chart 47 (Complainant's Exhibit F), in evidence where the heavier shading, indicating large timber, is marked "Willow" and the light shading, indicating small timber, is marked "Willows." Chart 45 of the Mississippi River Commission, being Complainant's Exhibit E. E., will show Tullos Island as being covered with oak, cottonwood and hackberry and shown by the shading to be large timber. If defendant's contention were true that the high ground referred to and claimed by him to have been a portion

of Tullos Island that had not caved away, this work sheet would doubtless have shown in place of the word "Willows" the words "Oak," "Cottonwood," and "Hackberry," and would have shown it to be large timber, instead of small timber, as indicated by the use of the word "Willows."

The above facts indicate that Captain Marshall's deduction is wrong, and that what was once "Tullos Island," or Island 98, was completely washed away, the channel of the river having swept completely over what was the location of the island and eastward thereof; that the sand bar from Louisiana shore continued to build out and build up high toward the outer end, and that "Willows" did spring up on this higher ground, and, as they grew and the current of subsequent high waters covered this point, the slackening current, because of the willows, caused silt to be further deposited and the process of making higher ground was continued thereby, and that said location is what is shown on Chart 47 as Newman's Towhead, being Exhibit F of complainant, and is not Island 98.

It may be further noted that the high ground claimed on Exhibit 4-D to have been Tullos Island in 1882 extends, according to said exhibit, about a third of the way across what said exhibit shows to have been the channel of the river in 1882 and across the thalweg at that time. This deduction from the survey and contour lines of 1894 would place a portion of the land that is claimed by defendant to be Island 98 continuously since 1823 to be west of where said island is shown by his exhibit to have been and across where the thalweg of the river was in 1882.

TIMBER.

Virgin Timber on Island 98

That at the time of the Survey of 1882 by the Mississippi River Commission the trees on Island 98 were *gum, hackberry, ash, cottonwood, virgin timber,* one tree 7 or 8 feet through. (R. 262-263). That the timber was virgin timber on Island 98 is also shown by the Chart of 1882, introduced in evidence herein, and the

Testimony of Capt. C. H. West and Chart 1882. (R. 151.)

Timber on Newman's Towhead, cottonwood and willow, which grows principally on newly formed accretions.

The timber on Newman's Towhead was nearly all cottonwood and willow, and it grew very rapidly. This is shown by the following testimony: (R. 26, 27, 32, 39, 52, 53, 69, 71, 72, 75, 87, 88, 89, 100, 104, 105, 109, 124, 125, 126.)

III.

CLAIM ON DOMINION AND SOVEREIGNTY OF MISSISSIPPI WITH ACQUIESCENCE OF LOUISIANA.

Defendant claims it should have a decree in its favor, establishing its title to the property because of its long alleged possession and its exercise of Sovereignty and dominion over same, and complainant's acquiescence therein.

Two things must be established by defendant to entitle it to a decree on this point.

1st. Long continued, exclusive possession, and the exercise of exclusive sovereignty and dominion over the territory in dispute.

2nd. Knowledge of such possession sovereignty and

dominion by complainant and its acquiescence therein.

If either fail the rule does not apply.

Defendant alleged in paragraph six of its answer, that at all times since 1817, said lands have been *claimed* by the State of Mississippi, have been *assessed* with taxes by the State of Mississippi; *and the owners thereof have at all times recognized the sovereignty of the State of Mississippi thereto.*

This paragraph, taken in connection with the allegation in the same paragraph of the answer, that the land in dispute *has been Mississippi territory since the organization of the State in 1817,* necessarily means that *the Mississippi owners,* or those claiming title under the State of Mississippi, have at all times *recognized the sovereignty of the State of Mississippi.* (*This could not bind Louisiana.*)

There is an allegation in the same paragraph of the answer that not until a short time before the bringing of this suit, did the State of Louisiana *make any claim to said lands.*

This is true in so far as making any claim *against the State of Mississippi is concerned,* prior to the cut off of 1912, as Louisiana was in the actual occupancy as owner of the land in dispute, without any claim whatever from Mississippi, or any of its citizens, there was no reason why Louisiana should make a claim against Mississippi, or its citizens, for something that Mississippi had never *possessed or claimed.*

There is no allegation in the answer that Louisiana, or its citizens *have ever recognized the sovereignty of the State of Mississippi, or acquiesced therein.*

There is no evidence in the record of any fact which would show that Louisiana *recognized the sovereignty* of the State of Mississippi over the land in dispute, or

in any way *acquiesced in its jurisdiction*, or had any evidence of a claim of jurisdiction by Mississippi, until Mr. Etna J. Albrittain, one of those at present claiming ownership, just before this suit was filed, made claim to the land.

The only way the contention that Louisiana has recognized the sovereignty and jurisdiction of Mississippi could have any effect in aiding Mississippi to hold the territory in dispute, would be on the theory that Louisiana had the legal title to the land, but had lost it by permitting Mississippi to occupy the land, and exercise its sovereignty and jurisdiction over same, and by the acquiescence of Louisiana therein for such a great period of time it had estopped itself from claiming said land, or that it had lost same by prescription.

The plea of estoppel by acquiescing in an existing state of facts, is a special defense, and must be pleaded or the courts will not notice such contention.

The same is true of a plea of prescription.

We think, as there are no such pleas in this case, the Court should pay no further attention to same.

It cannot be said that the pleadings have been broadened by the introduction of evidence without objection, as the only evidence that could even remotely be claimed to have such effect is the assessments, tax sales and patents from Mississippi; these could not have such effect, as they were admissible on other grounds. They were admissible as going to show that Mississippi claimed title to the lands, the rule being that where evidence is admissable on any ground, it does not have the effect of broadening the pleadings, by being introduced without objection.

Complainant submits that special issues require spe-

cial pleas, and cannot be injected into a cause solely in briefs and arguments of counsel, as is attempted to be done in this case.

Let us examine the facts as to dominion, possession and control of the territory in dispute.

To keep the court from getting the facts confused on this particular issue, we call attention to the fact that Tullos Island, afterwards called Island 98, once existed; that it was under dominion, possession and control of Mississippi and was Mississippi territory. Mississippi contends this island never disappeared, but after washing away considerably, the river ran around it, and it then made by accretion out in the old bed of the river until it connected with the Louisiana short. If this contention has been established, then Louisiana never had title, and the question of Louisiana losing its title by permitting Mississippi to take and maintain possession and control, could not arise; but if Louisiana's contention that the island entirely washed away, and that the accretions to Louisiana have extended out and over the location where the said island once existed, then there could be no grounds for the contention that Louisiana had lost its title by acquiescing in the possession, dominion and control which Mississippi had taken of this Louisiana accretion, *as it never any possession of it.*

The question then, on this particular issue, for the Court to decide is:

Did Mississippi Take Possession and Control of This Accretion, with the Acquiescence of Louisiana.

Let us examine the record for the facts.

Mr. I. B. Beard, (T. B. Beard in Record) said: "I had never heard of any part of this land being claimed

by Mississippi *before I was a witness in the case.* (1926.) (R. 90.)

The Newman heirs were regarded as owners of the property. (R. 90.)

Mr. Ernest Newman said his family claimed Willow Point and Newman's Towhead. Newman's Towhead got its name from the Newman family; it was considered to belong to his father. "We had cattle running on it—a cattle range on it."

They paid their taxes in Louisiana and paid none in Mississippi. (R. 53.)

While they paid no taxes on this accretion, *it was not assessed.*

George R. Newman said he never heard of Newman's Towhead or any part of Willow Point being claimed by Mississippi, until since this suit began. (R. 70.)

No part of Newman's Towhead was in cultivation prior to 1912, the time of the cut-off. (R. 72-73.)

Lawrence Towns said he knew the Newman place over in Louisiana. * * * "They just call it *Newman Towhead.*" He leased it from Mr. Learned. (R. 224.)

His lease was offered in evidence; it was of a tract of land in *East Carroll Parish, La.*, containing about 2000 acres, more or less, being what is now known as *Newman's Towhead, with accretions*, and being a part of the Belle and Willow Point Plantations, in said Parish. (R. 226.)

He leased from Mr. Learned for six or eight years. (R. 226.)

This lease was made after the cut-off (1912). (R. 228.)

He did not cultivate any part of the Towhead: but dropped some corn in cracks, and it came up and the hogs ate it; he had 800 or 900 head of hogs over there. (On the Towhead.) (R. 227.)

Mr. Learned leased Towns this property *to keep others off of it.* Towns said: "*That is what he told me,* by word of mouth, *to keep everybody off of it.*" (R. 241.)

While it is thus shown persons claiming the ownership under Louisiana title, of the property, *had the actual physical possession* and occupancy thereof until a short time prior to the bringing of this suit, there is not a word in the record to show physical possession or occupancy of any of said property, by Mississippi claimants.

It is true that the Newmans had no deed to the Louisiana alluvion formed by accretion, *but they needed none;* they had a deed to the property bordering on the river, and owned the property in dispute as an accession by virtue of their riparian proprietorship.

The riparian proprietor does not get a new deed from the United States Government or the State, to the accretions formed by alluvion.

The accretions are *accessory rights,* attaching exclusively to the riparian estate.

The right to these alluvial formations is a vested right, *inherent in the riparian ownership* of the land to which it attaches.

White vs. Leovy, 49 A., 1660.
State vs. Buck, 46 A., 656.
Suc. Delachaise vs. McGinnis, 44 A., 1043.
Meyers vs. Mathis, 42 A., 471.
Municipality No. 2 vs. N. O. Cotton Press, 18 La. 122.

There is no doubt that in the early eighties, about 1882, Tullos Island, or Island 98, sometimes called Scruggs Island and which was then Mississippi terri-

tory, was actually in possession of a man by the name of Scruggs, and that part of it was cultivated and that it had a gin on it, but this possession seems to have been abandoned before the Island all caved away.

There is not a word that complainant can find in the record to show any possession by any one claiming title from Mississippi, of the territory in controversy.

William Miller said Scruggs was on the island in 1886 (R. 308).

Mr. Foster said there had been no gin on the island for a long time (R. 211).

The gin was there in 1882 (R. 215).

He does not say that he was closer than within two miles of the Island *after* 1882.

Complainant has shown by I. B. Beard and the two Newmans, actual possession of the property in dispute, Willow Point and Newman's Towhead, until 1907, when the Newmans dispsoed of the property (R. 53, 67, 70, 77, 79, 90).

Mr. Learned, under Louisiana title, was in the actual occupancy and possession thereof, after the cut-off in 1912, for six or eight years, through his tenant, Lawrence Towns, and that possession *was exclusive* (R. 224, 226, 227, 228, 241).

The fact is while Scruggs was in possession of Tullos Island, or Island 98, Mississippi territory in 1886, that island is shown to have washed away and to have entirely disappeared in 1893 and the channel of the river to have passed over its location, and the property in dispute is accretion to Louisiana, partly over the place formerly occupied by said island; that the land assessed, or sold in Mississippi, prior to the Spring of 1893 or 1894, the time when the island washed away, can have no bearing on the question now

being discussed; that is the acquiescence by Louisiana in the dominion and possession of Mississippi of the territory in dispute, for the reason that as long as any of said island was left, it was Mississippi territory and no claim was made to it by Louisiana. After the island disappeared in 1893 or 1894, the Louisiana accretions had made over part of the former location of that island, attempted assessments made in Mississippi, after said date, of the land by sections, townships and ranges, of the former island, which did not then exist, *was not an assessment of the accretions*, which had made out from Louisiana, as same had never been surveyed, and had no section number or township. It was simply a perfunctory continuance of assessment by the State of Mississippi of land which before the same caved into the river had been a part of Mississippi, but which no longer had any existence. It was an attempted assessment of land that had no existence, and therefore no assessment at all.

By reference to Complainant's "Exhibit A," Willow Point was in Township 19 North, Range 14 East, Louisiana; unless the accretions extended easterly from the eastern side of said range line more than six miles, it would be in the same township and range as Willow Point. If it extended East, more than six miles, such part would be in Range 15, *Louisiana*. Again, if any part of the accretions extended North beyond said township line, such part would be in Township 20, *Louisiana;* provided a survey was made of said accretions, while all the land defendants claimed to have assessed, purported to be in Township 9 North, Range 8 West, of Mississippi.

Complainant's contention is that none of this Louis-

iana property was ever assessed, or sold at all by the purported assessments, and sales in Mississippi and that even if Louisiana had notice of such purported Mississippi assessments and sales, which it did not have, *it would not bind Louisiana.*

Defendant's contention, when laid bare by the facts, is simply this:

That Louisiana territory can be acquired by an assessment and sale in Mississippi, without the alleged purchaser taking possession, and without any knowledge of such assessment, or sale by Louisiana, or its citizens.

No court will pay any attention to such contention.

There is neither allegation nor proof in the record, that either Louisiana, or the owners of the Louisiana territory in question, *had any actual notice of the alleged assessments, or sales,* and it is certain such notice would not be presumed.

It is a fact that accretions are not usually assessed in Louisiana, unless they are sold, when the assessor has some basis to act on; before then he would not know the description, acreage or value. Defendant claims the law requires an assessment. Suppose it does. *The fact is well known to every resident on the Mississippi River, that such is not generally done.*

These accretions are of various shapes and sizes, *and have no value until timber grows upon them.*

Until the last thirty or thirty-five years, the class of timber that grows on accretions had no value, and it is only in recent years that it has much value; this is a matter of general knowledge.

Whether these accretions were assessed by Louisiana, or not, *as Mississippi did not occupy or possess same,* there would be no ground for Mississippi to claim the territory, especially when it was without in-

herent power to assess in Mississippi, land across the river, belonging to Louisiana.

If such were true, Mississippi could thus acquire any lands in Louisiana that she happened to find off the assessment rolls in Louisiana, *simply by placing same on the assessment rolls in Mississippi, and then Selling it for non-payment of taxes, over in the State of Mississippi.*

Complainant, neither in its original nor First Supplemental Brief, devoted much space to this claim, as it did not regard same as an issue. The only reason it now discusses this question at length is because the Master, to whom this case was referred, seemed to think there might possibly be something to this contention.

The decisions of the Supreme Court, bearing on the acquisition by one State of territory, of another, by dominion and sovereignty of the one State over the territory of the other, with the knowledge and acquiescence of the latter State, are shown in Complainant's Second Supplemental Brief, beginning at page 13 thereof, to which the Court is respectfully referred.

We can make no stronger argument to show that the purported assessments in Mississippi after 1893 were assessments of land which had been cut away by the River and had no existence at the time of the assessments than to adopt the findings of the Special Master as set forth on pages 42 and 43 of his Report, which by reference Complainant adopts as a part of its argument on said point.

If the assessments were of land that did not exist the sales based thereon were of land that had no existance, and neither the assessments nor sales could have any legal effect,—even in Mississippi. The Defendant admits, by offering the assessments which

themselves show the disappearance of Island 98, that the Defendant's whole claim to the territory in question is based on a claim to territory which by its own admission had washed away and caved into the Mississippi River.

IV.

STATEMENTS IN BRIEF OF DEFENDANT ON EXCEPTIONS TO THE SPECIAL MASTER'S REPORT.

On page 2 defendants say the *territory* was originally surveyed as part of Mississippi. Complainant contends the evidence shows the land in dispute was never Mississippi territory, but was silt brought down from somewhere up the Mississpipi River, and deposited on the Louisiana shore, and the Mississippi shore receding, this alluvion extended over the locality that had once been Mississippi territory, but which had been lost to that State.

On page 3, it is admitted that this extending Louisiana bank, at Section 7, had gone east approximately one and a half miles.

On page 4, it says the old 1882 channel filled up to almost level. This might convey the idea that the 1882 channel was abandoned, leaving its banks intact. Such was not the case. This is not shown to be so by the evidence, but the evidence is that after 1882, the caving on the Mississippi side became more rapid, and as the Mississippi shore cut away the Louisiana bar line advanced.

On page 5 it says there is no dispute that subsequent to 1894 the channel was *east* of the location of Tullos Island as surveyed in 1823 and 1882.

This might convey an erroneous impression. The testimony shows that nearly all of the 1882 location of Tullos Island was in the channel in 1894, except a small part of the northwest corner, which had been covered by the sand bar from Louisiana. As to how far it went east afterward will be determined by the Commission when appointed. The channel evidently went much further east after the disappearance of Tullos Island.

On page 5 it is further stated that it is shown *without dispute* that from 1894 to 1912 the *territory* originally surveyed as Tullos Island, but at that time connected with Louisiana by the "old filled up 1882 channel," * * *. What complainant objects to is the implication that it has made any admission that the *territory* in question *ever belonged to Mississippi*, and that the old channel of 1882 filled up. Complainant contends that the whole river, as it existed in 1882, continued to move eastward for ten years, and as it did so the bar from Louisiana extended out over where the 1882 channel was. That the channel of 1882 did not remain the same even for a day, but that it was creeping eastward all the time, so that there was no fixed 1882 channel to fill up, after the river moved east of Tullos Island, but that the location of the 1882 channel was gradually filled each day as the river moved eastward.

On page 8 defendant again speaks of Island 98 as the territory in controversy. Of course, that is merely his contention.

On the same page, he says that the same rules apply to a boundary dispute between states that applies between individuals. That is the general rule, but it is not applicable in all cases. To illustrate—The land

must be accretion to the original bank, or to an island owned by an individual, for him to claim it. But, as to the State of Louisiana, any island formed in the river west of the dividing line belongs to the State, and all accretions which may attach to it. This is not true as to an individual. In Louisiana all islands formed west of the channel belong to the State.

On page 13 defendant comments on the fact that Mr. Purnell said the island above Island 98 was Hopkins' Island. The plat of Hopkins' Island and the island above Tullos Island are shown at pages 60-61 of Defendant's Original Brief, as they existed in 1882, and you will note that the western side of this *High Bar*, or Island, was nearly touching the eastern part of the former location of Hopkins' Island. The witness said he knew little about maps. The error was one that might easily happen.

On page 14, defendant says Cap't. De Lahunt took *Upper* Tullos Island for Hopkins' Island. He said the Only other island he knew of was Hopkins' Towhead. (R. 299.) That this island was west of Island 98. (R. 298.) The witness evidently called Newman's Towhead, Hopkins' Towhead.

On page 18, defendant says Captain West, in his testimony, denied the existence of the work sheets of the Survey of 1894. This is a mistake. Cap't. West said the field notes were on file with the Secretary and they would not give the original. The record shows what Cap't. West said . (R. 152, 153, 157, 158, 159.)

On page 23, defendant refers to Cap't. Marshall as saying the island is shown on the 1894 map. Of course this is merely his opinion. On page 29 he says Captain Marshall is corroborated by four of complainant's witnesses:

Ernest Newman, (R. 72).
George Newman, (R. 80).
Cap't. W. H. Reed, (R. 141, 145, 146).
E. T. Purnell, (R. 426).

Complainant contends there is no corroboration. The record will speak for itself.

On page 35 defendant claims that a number of complainant's witnesses said "boats travelled the channel (1823) in high water as late as 1878." (R. 432, 433.) Mr. Purnell, nor other witnesses of complainant ever said boats travelled the old channel of 1823.

On page 36, defendant, referring to Cap't. West's testimony, says:

> "If it is a fact that Chart 46 was pasted over Chart 45 up to the north end of Island 98, it does not correctly show the true situation."

This needs no further answer than to call the Court's attention to the fact that he does not claim same was a fact.

On page 37, defendant would make Island 98 and Newman's Towhead identical. This is not sustained by the evidence.

On page 75, defendant claims the engineers of the Mississippi River Commission, in 1894, found the islands in their *old position*, with timber growng thereon, and delineated by them on their field work sheets, and on the same survey and work, or field sheets, showed the river had passed around them to the north and east. Of course this is merely the opinion of some of defendant's witnesses.

Complainant contends the evidence shows this contention of defendant to be incorrect.

We have discussed this fully heretofore in this brief and will not again discuss same here.

On page 76 defendant says that none of the Mississippi River Commission maps of the Survey of 1894 leave off the island.

In reply, we merely refer the Court to complainant's "Exhibit C" and to Sheet 17, showing the Commission Survey super-imposed on the Chart of the Survey of 1882, which we have fully discussed herein.

TWENTY - TWO REASONS WHY DECREE SHOULD BE IN FAVOR OF COMPLAINANT.

Complainant gives the following as some of the reasons established by a preponderance of the evidence, why judgment should be rendered in its favor:

1st. It is shown that the accretions to the Louisiana shore, at the point involved, were continuous from prior to 1866 to the date of the avulsion in 1912-1913.

2nd. That during the same period the Mississippi shore receded correspondingly by erosion.

3rd. That after the boundary line between Complainant and Defendant had thus moved in an easterly direction, some five miles, an avulsion occurred in 1912-1913, through the Louisiana accretion, thus leaving Louisiana territory a part of the territory in question, on the eastern side of the river.

4th. That there never was any avulsion, other than the one of 1912-1913.

5th. That the banks of the river on both sides, as well as islands, were alluvion and when the current was directed against same, cut away rapidly.

6th. That Tullos Island, or Island 98, entirely disappeared.

7th. That the channel at all times was west of Island 98 until it disappeared entirely, and was on the Mississippi side of the river at this point.

8th. That the timber on Island 98 was timber that grows on older soil, such as gum, hackberry and cotton wood, one tree being 7 or 8 feet through.

9th. That the timber on Newman's Towhead, *being the property in dispute,* was principally cotton wood and willow, being such growth as appears on newly made soil in the Mississippi River.

10th. That the timber on the original land at Willow Point included sycamore, gum, elm and pecan, which usually grow on older soil, and being the same character of timber as was on Island 98.

11th. That Willow Point and Newman's Sand Bar, on which the Towhead later formed, existed at the same time as Tullos Island, and that they were on opposite sides of the river and could not be the same property as contended by defendant.

12th. That only one channel existed at the point in controversy prior to the 1912-1913 cut-off.

13th. The river at this point was about three-fourths of a mile wide. It was wide and deep, and *maintained* about its same width, and as the Mississippi shore receded, the Louisiana shore necessarily advanced, for the river to maintain its same width.

14th. That between 1882 and 1894, until Tullos Island entirely disappeared, the channel was always west of said island, with the current against the west side thereof, which was caving and could not be added to by accretions.

15th. That the channel until the cut-off in 1912-1913, was always east of Willow Point Bar, between that and the Mississippi shore, and after about 1894 with no island intervening.

16th. That at the point in controversy, Louisiana is on the convex side and Mississippi on the concave side. The channel and the caving is always on the concave side, and the accretions attach to the convex side.

17th. That the Mississippi River Commission considered the land in dispute to be Newman's Towhead and not Tullos Island, or Island 98, or any other island in Mississippi, and therefore marked on Chart 47, being the survey of 1913-1915, made after the cut-off of 1912-1913, the words, "*Newman's T. H.*" On the map of this Chart, made by defendant's witness, Capt. Marshall, in defendant's brief, page 16, appears in writing, the words, "*Tullos Island.*" These words are not on Chart 47 of the Mississippi River Commission, but have been placed on defendant's map by someone, with pen and ink apparently, and it therefore does not correctly represent Chart 47 of the M. R. C.

18th. That Walter R. Newman owned Willow Point Plantation. The Bar attached was called Newman's, as it belonged to the owner of Willow Point Plantation, and the Towhead formed thereon was also called Newman's Towhead for the same reason. This shows that the people, and river men as well as the Mississippi River Commission, considered the property in question to be Newman's Towhead.

19th. Had defendant's contention been correct, there would have been two channels at the point in controversy, in 1894, but the Chart of the Mississippi River Commission of 1894, superimposed on the Chart of 1882, shows only one channel, and where the second one must have been, for defendants contention to be correct, shows the bar from the Louisiana shore, extending entirely out to the only channel that existed.

20th. The Mississippi River Commission made a very exhaustive survey of the locality in question in 1882, and were at all times, until 1913, in charge of this reach of the river, and made almost yearly surveys (R. 152) and had the River cut around North of Tullos Island, between 1890 and 1894, leaving said Island intact, thus making two channels of the River,

they would have known something about it and their records would have shown it.

21st. There were plenty of living witnesses, by whom it could have been shown that there were two channels of the river at this point at this date had such been true. None were produced by defendant who swore to such condition, while complainant showed by numerous witnesses that there never was two channels in the river here, after 1894, and that there was no island between Newman's Towhead and the Mississippi shore prior to the 1912-1913 cut-off.

22nd. When a change in the river is alleged such as claimed by defendant occurred between 1890 and 1894, the burden of proof is on the one alleging such change to show same, in which defendant has utterly failed.

Complainant prays that your honors adopt the conclusions and recommendations of the Special Master and that you appoint a Commission to fix and mark on the ground the boundary line between the parties at the point in controversy, and that cost be taxed against the defendant.

Respectfully submitted,

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DEC 17 1930

CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1928

Number 9 Original. In Equity

THE STATE OF LOUISIANA,

Complainant,

VS.

STATE OF MISSISSIPPI,

Defendant.

BRIEF FOR THE STATE OF MISSISSIPPI ON EXCEPTIONS TO MASTER'S REPORT

GEO. T. MITCHELL,
Atty. General of Mississippi,

H. H. CREEKMORE,
PAT HENRY,
RUFUS CREEKMORE,
E. C. SHARP,
RUSH H. KNOX,
Attys., for State of Mississippi.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1928

Number 9 Original. In Equity

THE STATE OF LOUISIANA,

Complainant,

VS.

STATE OF MISSISSIPPI,

Defendant.

BRIEF FOR THE STATE OF MISSISSIPPI ON EXCEPTIONS TO MASTER'S REPORT

STATEMENT OF THE CASE.

This is a suit in equity filed by the State of Louisiana to establish a portion of the true boundary line between it and the State of Mississippi. After answer filed by the defendants and on motion of the complainant, a commission was appointed by this court for the purpose of taking testimony and proof relative to the merits of the controversy. The case being called before this court the same was referred to a special master, the Honorable Thomas G. Haight, with directions and authority to report to this court his findings of facts, conclusions of law, and recommendation for a decree herein. The case now comes before the court on the record and transcript of evidence taken before the com-

mission, report of special master, and exceptions of defendant thereto.

STATEMENT OF FACTS.

That portion of the boundary line between the State of Louisiana and Mississippi, here in dispute, and the true location of which is to be determined, is in the vicinity of the territory known as Albermarle Bend of the Mississippi River, and between Issaquena County, Mississippi and East Carroll Parish, Louisiana. The territory in dispute was originally surveyed as a part of Mississippi and is described as a part of sections 9, 10, 15, 16 and 17, all of sections 20, and 21, and a part of sections 22, 28, 29 and 30, all in Township 9, North, Range 8, West, Choctaw District as shown by the United States Governmental survey of 1823 When this survey was made fractional sections 20, lots 2, 3, 4 and 5, all of Section 29, and fractional section 30 composed what was known as Tullos Island, later as Island No. 98.

The remainder of the territory in dispute then lay to the east and north of Tullos Island on the Mississippi Mainland, it being separated from the Island by a chute running between it and the shore of the mainland.

The Louisiana shoreline was surveyed in 1824. This survey showed Willow Point Plantation in Louisiana comprising fractional sections one to nine, Township 19, North Range 14, East, numbered clockwise in fan shape with the river flowing slightly south and east until it reached Willow Point, from whence it sharply turns in a southwesterly direction.

The various surveys being shown on maps attached to the original brief for the State of Mississippi, defendant, filed herein, which brief and maps are asked to be taken and considered in connection herewith.

After the 1823 and 1824 governmental surveys were made, no survey of the reach of the river in question showing both banks was made until 1882, which survey is shown by Mississippi River Commission Chart No. 45, which appears on page 13 of the original brief filed herein, being complainant's exhibit "M" which was made under the direction of the Mississippi River Commission. It shows all the details of the survey; not only the shore line but the river and general features of the land such as levees, landings, cultivated and timbered lands, but also government lights, contours, and elevations of the land and the soundings in the river.

It shows the Louisiana shore to be caved along the north side of sections 1, 2, 3 and 4, the river there since the 1824 land survey having moved about one-quarter of a mile. From the line dividing sections 4 and 5 where later on no change has occurred, down to section 9, the river had changed its channel to the eastward, the new channel being at its most easterly point in front of section 7, and there approximately a mile and one-half east of the channel as shown by the 1923 survey. The course of the river after leaving Williow Point has also changed, it then flowing in a southeasterly direction, whereas it had formerly flowed in a southwesterly. Tullos Island, or Island 98, is shown divided into two parts, this apparently having been done by

the chute shown running between the upper and lower islands, all of which save the lower end had closed up. The upper island composed of a part of section 20, of the original Tullos Island, had extended in a northerly and northeasterly direction: the lower island, although greatly reduced in size, had extended slightly to the east, the growth in that direction apparently being at the expense of the old chute which is shown much narrower than in the 1923 survey.

Sheet 17 and Exhibit 4-A-B-C show that the Louisiana shore on the north side had caved to a very great extent, especially up-stream to the west from Willow Point and decreasing almost to nothing at the point. The direction of flow from the point had changed from the southeasterly direction of 1882 to a northeasterly direction, the river abandoning its old bed, cutting around the head of and to the north and east of upper and lower Tullos Island, straddling and enlarging the original chute between Tullos Island and the Mississippi shore and making it the new channel of the river. In making this new channel the river is shown to have cut into the main Mississippi shore north and northeast of Tullos Island the full width of the river or more, while towards the lower end of the island there had been less caving of the Mississippi shore; the widening of the chute there being mainly at the expense of the island, the southern and eastern part of which is shown to be in the channel of the river. The old 1882 channel is shown filled almost level across, twenty feet above the level of the then (1894) channel and twenty to twenty-five feet lower than the island.

Mississippi River Commission Chart No. 47, survey of 1913 and 1915, is the next map of that portion of the river here under consideration. This chart shows the same character of detail as Chart 45 of the 1882 survey and sheets 5, 5½ and 6 of the Mississippi River Commission Survey of 1894. It shows that the river had returned to its old 1882 channel, not, however, until parts of Sections 8, 9, 10, 15, 16, 17, 21, 22, and 29 T. 9 N. R. 8. W. had caved into the river on the Mississippi shore, and all of this territory not actually occupied by the bed of the river had been added by accretion to Island 98, or "Newman's Tow Head," so-called on the chart.

There is no positive testimony in the case showing how the river changed from its 1823 to its 1882 channel. The maps mutely testify to the radical change that occurred; the witnesses testify to the existing physical facts which circumstantially explain how it occurred.

There is no dispute between the testimony of the witnesses offered for the complainant and for the defendant with reference to what occurred subsequent to the making of the survey by the Mississippi River Commission in 1894, at which time the channel of the river was to the east of the location of Tullos Island as surveyed in 1823 and 1882. This testimony shows without dispute that from 1894 until 1912 the Mississippi River rapidly ate into the Mississippi bank and that the territory on the westward side of the river, originally surveyed as Tullos Island but at that time connected to the Louisiana shore by the old filled-up 1882 channel, rapidly built towards the Mississippi shore by ac-

cretion; that in 1912 or 1913 the river made a sudden change in its channel, cutting across the neck of the so-called towhead at the point where the old 1882 channel had been, scouring out the old riverbed and re-establishing itself there. The conditions shown on Mississippi River Commission Chart No. 47 are substantially as they are today, except that the 1894-1913 channel around the island has now become so filled up as to be unnavigable.

BRIEF AND ARGUMENT.

The exception of the defendant to the Master's Report lettered "A" is:

> "That the changes in the location of the channel of the Mississippi River in the place under examination herein from 1823 to the change which took place in 1912-13, were due to gradual erosions on the Mississippi shore and the gradual accretions to the Louisiana shore, and that none of said changes were due to avulsion."

Under this general exception the defendant has noted ten subheads or conclusions of fact reached by the Master, which taken together led him to the conclusions stated in the principal exception "A", and as the facts and arguments on these various subheads overlap one another for brevity and clarity, we will discuss all of these together.

The complainant's contention briefly stated is, that the Louisiana shore gradually built by accretion in a westerly direction towards Mississippi, the river cutting into and encroaching on Mississippi, whereas it gradually moved

north and east, and the Louisiana shore progressively following the encroachment; that this condition continued until all of Tullos Island, and much of the Mississippi mainland washed away, and until the Louisiana shore by accretion had built over the location formerly occupied by Tullos Island and had extended its northeasterly limits about one and one-half miles east and north of the original eastern boundary of Tullos Island.

The defendant's contention is that subsequent to the year 1882 the Mississippi River above and to the west of Willow Point cut into the Louisiana shore deflecting the course of the current from a southeasterly direction to a northeasterly direction; that because of this deflection in its course, the river cut around the head of it and to the north and east of what was left of Tullos Island, scouring out the old chute between the Island and the Mississippi shore; and making a new channel there; that the old bed of the river filled up so that Tullos Island became attached to the Louisiana shore; that the river continued to cave the Mississippi shore, adding to the Island by accretion until the year 1912 or 1913, when it suddenly abandoned its new channel and went back to the old 1882 channel, leaving Tullos Island again in truth an island, but greatly enlarged by the accretions thereto.

As stated by the Special Master in his printer report on page 18, "the testimony in respect to the total disappearance of Island 98 prior to 1894 is very conflicting and difficult, if not impossible, to reconcile."

With this finding of the Master, defendant contends that the burden being upon the complainant to establish its theory by a preponderance of the evidence, it has failed to prove that the Mississippi River gradually moved eastwardly from its 1823 channel to its 1882 channel; that the Louisiana shore line progressively followed it by accretion. And having failed to meet the burden imposed upon it, it has wholly failed to prove that such accretions became attached to territory belonging to the State of Louisiana and that the territory now in question is the property of that State; the contention of defendant is that it having been conclusively established that the premises now in question were the property of Mississippi at the time of the 1823-24 survey. And the Special Master having found as a fact that the Mississippi River Commission surveys of 1823-24 correctly located the river and shore line of the respective states at the date of these respective surveys, and that at these dates the territory now in dispute was within the boundaries of Mississippi. (Special Master's Report, pages 2 and 3.)

It therefore follows that it having been conclusively established that Island 98, which is the territory now in controversy, was the property of Mississippi in 1823 and 1824, and the plaintiff having failed to establish by a preponderance of the evidence that the Island completely disappeared prior to 1894, the presumption is that the Island never disappeared and is now the property of the State of Mississippi.

The same rules of law are applicable in a boundary dispute between States as between individuals.

Rhode Island v. Mass. 12 Pet. 734; 9 L. ed. 1233.

There is a presumption in favor of the permanency of boundary lines once established.

Tenn. v. Muncie Pulp Co. 119 Tenn. 47; 104 S. W. 437.

Simpson v. Martin, 174 Ark. 956; 298 S. W. 861.

A party asserting material changes in the course of a boundary river such as affects the boundary line has the burden of proving such changes.

Okla. v. Texas, 260 U. S. 6061; 67 L. ed. 428.

Simpson v. Martin, 174 Ark. 556; 298 S. W. 861.

Baumhart v. McClure, 21 Ohio, Appellate 491; 153 N. E. 211.

The party claiming land as accretions therefore has the burden of proving (a) that such lands were actually formed by accretion, (b) that they attached to lands belonging to him contiguous to the water.

Green v. Whitten, 200 Ky. 725; 255 S. W. 519.

Tillotson v. Fulp, 173 N. C. 499; 90 S. E. 500.

Mann v. Archbell, 186 N. C. 72; 118 S. E. 911.

Ball v. McDuffy, 212 S. W. 844.

Producers Oil Co. v. State, 213 S. W. 349.

Land v. Dunn, 226 S. W. 801.

Lennox v. Isbell, 245 S. W. 728.

Petty v. Oil Co., 254 S. W. 565.

Defendant's contention that Island 98 was never completely washed away is supported by the following witnesses, to-wit:

FROM 1823 TO 1882.

Complainant's Exhibit "M" Mississippi River Commission Chart No. 45, Survey of 1882, with the 1823 and 1824 governmental land surveys superimposed on it shows the difference in the location of the channel of the river in the years 1823-24 and the year 1882. Chart 47, Survey 1913-15 shows the channel of the river to be in identically the same location as in 1882. R. p. 183, 184. These charts show in detail the topography of the land now on the Western mainland lying between the 1823 shore line and the 1882 and 1913 shore line. A depression slightly to the East of the location of the 1823 channel, not named on the charts, but locally known as St. Francis chute, is clearly shown on each of them. Witnesses both for complainant and defendant show this depression to be the old filled-up 1823 river channel.

The testimony of the complainant's witness, George Prince, shows that he is familiar with this old 1823 channel. R. p. 39.

The complainant's witness, George Newman, is also familiar with this channel; his testimony showing that it runs in a Northeasterly direction from about Hendersons until it reaches the present river channel at about Willow Point. R. pp. 55, 56, 58, 59 and 60.

Defendant's witness, Lawrence Townes, testifies that he is familiar with this old river channel: St. Francis Chute; that it is on the Louisiana mainland and runs in a southerly direction down from Mrs. Newman's plantation, (Willow Point). R. p. 232 and 233.

The defendant's witness, Etna J. Albrittian, is the owner of some of the land in controversy under Mississippi patents. He has closely investigated the lands, had them surveyed, and gone over them with the surveyor. With reference to the St. Francis Chute, or the old 1823 channel, the witness in substance, testified as follows:

That in October, 1924, with the river stage at 38.9 at Vicksburg, the water was backed out into this old river channel. He followed it from Hendersons until he reached the river at Willow Point, finding it filled with water the entire way. The bank line of this old channel was clearly discernible most of the way, the banks showing about ten feet above the level of the chute. This chute or channel was shown by the survey to be in the same location as the channel of the river in 1823. R. p. 245, 248, 251.

Complainant's proof tending to show that the change in the channel of the river between 1823 and 1882 was the result of accretion and not of avulsion is supplied only by one witness, C. H. West. His testimony is based upon two maps, one of which was made in 1866 and the other in 1870. The 1866 map was not introduced in evidence, but the witness shows by his Exhibit "G" the bank line on the Louisiana shore, presumably taken from this map. R. p. 147.

The other map introduced as an exhibit to this witness's testimony was a survey of what is known as Hopkins

Island, as it existed in 1869-70. Comp. Exhibit "BB". R. p. 148.

With these maps as the only facts before him the witness undertakes to give a history of the change in the river during this period of time, expressing as his opinion that the river progressively moved Eastward and the Louisiana shore line followed it, being built by accretion. It should be kept in mind that there is no competent evidence of the 1866 survey and that the 1869-70 survey of Hopkins Island did not undertake to be a survey of either the Mississippi or the Louisiana shore line, but only of the island itself. It should also be borne in mind that none of these maps, except the 1882 survey showed the topography, the contours and elevations of the ground. The testimony of this witness is merely his opinion based only on the fact that the shore line in the different years was East of its former location.

FROM 1882 TO 1894.

In explaining how the river changed from the 1882 channel to the 1894 channel, the complainant's witnesses attempted to establish the fact that Tullos Island completely washed away, and that the Louisiana shore progressively followed the river to the Eastward by accretion, as the Missippi shore and the Island caved into the river.

Complainant's witness, T. B. Beard, a brother-in-law of Walter Newman, the owner of Willow Point Plantation, has been familiar with the territory in controversy for about fifty years. At the time of his earliest recollection, a bar extended out from Willow Point about a mile and a half, or two miles, and continued to grow year by year until, in

1912, it was three or four miles from the mainland. R. p. 87 and 88. He denies the existence of Island 98 during this period of time. R. p. 89, 95.

Complainant's witness, E. T. Purnell, moved to the Purnell plantation opposite Island 98 on the Mississippi River in 1880. R. p. 260. The channel of the river was then on the West side of Island 98 with a chute between the Island and the Mississippi shore. R. p. 262. Island 98 was caving on the west side and finally disappeared in 1894 or '95. R. p. 264, 282.

During this period of time the Louisiana shore was building out toward Mississippi. R. p. 265. Between the towhead and the mainland there was a depression through which in high water the boats would make a cut-off. R. p. 268, 269.

N. B. Captain Marshall's testimony shows this depression to be the old filled-up 1882 river channel.

The witness is familiar with Hopkins Island, describing it as being Northwest of Island 98. Hopkins Island did not wash away, R. p. 275, but the channel of the river changed around it. R. p. 276.

N. B. What this witness called Hopkins Island is shown conclusively by him, in referring to the map, Comp. Ex. "H" to be upper Tullos Island. R. p. 277.

Joseph V. De La Hunt, witness for the complainant. A steamboat captain and familiar with the river at the point

in question since 1880. Island 98 disappeared. R. p. 289, 292. Is familiar with Hopkins Island, the channel of the river being between it and Island 98; west of Island 98 and east of Hopkins. R. p. 292-298.

Hopkins Island never washed away. It was there in 1908. R. p. 298.

N. B. What this witness designates as Hokins Island was evidently upper Tullos Island.

Captain Charles H. West, member of the Mississippi River Commission since 1910. (R. 129.) His first observation of the river at the point in question was in 1893. R. p. 156. Has been thoroughly familiar with the river there since 1898 when he was appointed Chief Engineer of the Mississippi River District. R. 130. The witness explains the various maps and blue prints attached as exhibits to the original bill of complainant, and with them as a basis undertakes to give a progressive history of the changes in the river. He testified that the river gradually ate into Tullos Island and the Mississippi shore and that the Louisiana shore progressively followed it, being built by accretion. That this condition continued until all of Tullos Island was washed away and the Louisiana shore had built over its former location; that then by a sudden change in the course of the river a new channel was cut across these accretions, leaving them an island.

In giving his testimony the witness considers only the shore lines drawn on the maps, giving no consideration to the elevations and contours shown thereon. R. p. 140. He

attempts to explain why, in preparing his blue print Exhibit "I." showing the changes in the river during this period of time he ignored the topographical details shown on the map from which his exhibit was prepared, and in the location where the islands were shown on the map, wrote in the word "accretion." As to the soundness of his explanation, the court may best judge by reading it. R. p. 155-156.

The witness denies that there was a general topographical survey of this territory made in 1894, but admits that the original field notes of this 1894 survey are on file in the office of the Secretary of the Commission. He states that these field notes will show only the 1894 shore line. R. p. 157, 158.

N. B. The witness is conclusively shown to have been mistaken in these statements by the testimony of Captain Marshall who obtained from the Commission and introduced in evidence, blue prints of the original field or work sheets of the 1894 survey showing all details of topography, contours, and elevations on the land and soundings in the river.

William Miller, witness for defendant. A colored man born in 1875. Lived on Eustacia plantation directly in front of Island 98 until ten years of age. Island 98 had 250 acres. R. p. 302. Moved to Brunswick, eight miles below Eustacia, stayed there ten years, visiting back at Eustacia every week. R. p. 310. Moved to Vicksburg, stayed there from 1897 to 1916, working as a roustabout on the steam-

boats, "Annie Laurie," "Ruth," "Chattahoochie," "Belle of the Bend," "Ben Hur," " Cardee," "Webb Oliver." Passed the island six times a week. Island 98 never washed away, although all but about 75 acres of the upper part did cave into the river. R. p. 304. A part of the island was in cultivation, a man by the name of Scruggs living on it. R. p. 305-306.

Lawrence Towns. 59 years of age. Colored. Lived at Chotard in 1880. Familiar with Island 98 which he called Scrugg's Island. Also with Hopkins Island R. p. 220. The witness leased the island and raised hogs on it, eight or nine hundred head. R. p. 225-227.

The witness is familiar with what he calls Hopkins Island, it being just a little to the north and west of Island 98. R. p. 231-232.

Was a roustabout on steamboats for ten years, passing by Island 98 three or four times per week. R. p. 220. The channel was on the west side of the island except in high water. A part of the island washed away, but not all; some of it is still there. R. p. 221-222.

R. E. Foster. Age 75. Member of the Legislature. Owns three places, the lower place in sight of Tullos Island, or Scruggs' Island. Has lived there since 1882. Island 98 never completely washed away. R. p. 209, 210. The channel changed frequently at this point. R. p. 211.

E. J. Albrittain. Is thoroughly familiar with the territory in question, especially as to the physical conditions

existing. Holds Mississippi patents to some of the land in controversy. R. p. 243. Went over the land in 1924 with a surveyor. R. p. 256, 257. The witness with the surveyor located the old chute line between the Island and the Mississippi shore in 1823. This channel was clearly discernible in the same location as the old chute in 1823 with lakes interspersed through it. He followed it to where it runs into the present river channel. R. p. 245, 246.

The territory to the West of this old chute line, running up to the river on the West and paralleling the old chute line on the East, is covered with large cottonwood and willows. R. p. 243. This area between the old chute shore line and the present channel of the river is composed of clay soil. The river bank there is about 25 feet high. The largest timber on the Island grows on this high ground, and immediately East of the old chute the growth is of small willows. R. p. 244. The character of the soil and the character of the timber here is the same as that on the old Mississippi mainland. R. p. 252.

Captain H. M. Marshall. Civil engineer since 1877. Lives at Vicksburg. Has been in the employ of the United States Government for forty years. Has been in the United States Engineer's office at Vicksburg from 1888 until 1924. R. p. 168 and 169. Is thoroughly familiar with the territory in question. There in 1890, in charge of the levees in that immediate vicinity. R. p. 175. The witness first refers to Sheet 17 of the Mississippi River Commission—Complainant's Exhibit "C"—showing Island 98 divided into two parts. R. p. 171.

In 1890, during the high water, witness was in charge of the levees in this territory, and both parts of the island were there then. He saw the mail boat come up the chute between the mainland and the islands. R. p. 185.

The witness next introduces Exhibits 4-A-B and C, three blue prints of field sheets numbers 5, 5½ and 6 of the Mississippi River Commission Survey of 1894, certified to by the Secretary of War as correct and official maps. The scale is 1:10,000 and the maps show the same character of detail as Chart 45 of the 1882 survey.

N. B. Captain West in his testimony denied the existence of these maps. Counsel in their brief evidently blindly followed Captain West's testimony, denying and ignoring their existence.

Captain Marshall described the topographical details shown on these maps, showing that at the time the survey was made in 1894, there was high ground of the same elevation, or a slightly higher elevation, than Tullos Island in 1882 and located in identically the same place as the islands were at that time; that to the West of this high ground and at the place where the channel of the river was situated in 1882, there is low ground from twenty to twenty-five feet higher than the water level. R. p. 172, 173:

> "A. Exhibit 4-A, in the upper right hand corner, shows high ground, an elevation of 110, Memphis data. The line (fol. 257) running around the high ground shows the timber line. This high ground is on the Western side or towards Louisiana of the Mississippi river. This 4-A is sheet No.

6 of the blue print issued by Mississippi River Commission, certified by the Secretary of War. It is joined to sheet 5½ of the same survey and blue print marked Exhibit 4-B. On that 4-B the high ground extending down the river with the timberline marked thereon. Sheet 5½ of 4-B is continued down the river on Sheet 5. This sheet shows a continuation of the high ground down the Mississippi River with the timberline marked thereon. On these three sheets elevations are written, referring to Memphis data. They give the height of the ground. Height of the ground, as I have stated, is 110 at the upper end, and—

Q. (Interposing.) *The upper end of what?*

A. *The upper end of the island.* And it runs off down to various numbers, 104, 108½, 107.4, 104.3, 109.5—various numbers. That is on the high ground.

Q. *That is Tullos Island you are talking about?*

A. *Yes, sir.* To the West and at the upper end of Tullos Island are various numbers, giving the elevations—86.4, 86, 89, 85, 86, 90, which it will be noticed, the 90 is 20 feet lower than the 110. On the lower end of Tullos Island the figures written to the West of the Island, run 81, 85, 82, 84 and 95. On these three sheets the shore line of 1882 is (Fol. 258) marked along the Western limits or Western edge of Tullos Island. On the Louisiana side the bar line of 1882 is marked. To the East of this Island, is shown the channel of the Mississippi River at the time this survey was made in 1894.

Q. Is there anything else shown on that map,

Exhibit 4, A, B, C, which would indicate the change of the main channel of the Mississippi River?

A. The fact that the Island elevation is over 100, which is about the elevation of the bank line on the Mississippi River shore. The location of the channel of the Mississippi River East of that high land shows that the River had gone around the upper end of the Island and was flowing to the East of the Island.

Q. Does that show that the Island was washed away or still there?

A. The Island could not have been washed away."

And again on pages 173 and 174:

"Q. I don't know whether you have stated it or not, but is there anything else shown on the map which would indicate the change of the main channel of the Mississippi River?

A. The fact that the Island elevation shows a reading of 110 feet, and the water survey on the shore line shows a reading of 60 feet, is absolute proof of the fact that the Island was 50 feet above the water surface at the time of the survey, with trees growing on top of it. I can state of my own personal knowledge that in 1890, four years before the survey was made, that Island 98, or Tullos Island, the island above it, had not been washed away, but was still in existence. Of course everybody knows that (Fol. 260) an island cannot be washed away and then four years later be built back with big trees growing on it, as shown by this survey. There is another thing I want to show you. Up stream from this island shown on

Exhibit 4-A, and Westward to the Louisiana side, the elevations of the ground surface are 20 feet lower than the elevation of the island, that is, the ground West of the island is 20 feet lower than the surface of the island. This low ground to the West of the island is in the location of the Mississippi River in 1882, which shows that the Mississippi River had gone around the head of the island and over to the east, and a bar had formed from the Louisiana side over to the head of the island. If the island had washed away and the accretions made from the Louisiana shore, this low ground could not have occured if the Mississippi River had gradually moved over towards the State of Mississippi, building an accretion on the Louisiana shore. That accretion would have been adjacent—would have been higher adjacent to the Louisiana shore, and lower as the accretions were formed from year to year towards the Mississippi shore." (R. 173 and 174.)

Captain Marhsall correlated the three blue prints 5, 5½ and 6 on one sheet, making a tracing so as to show on this tracing in one sheet, the location of the high ground, or islands, and the low ground to the West. On this tracing, the witness superimposed the section lines. He also prepared another tracing reduced to the scale of the Mississippi River Commission Charts No. 45 and 47.

"A. I have prepared a tracing from blue prints—from the three blue prints shown as 4-A-B-C, so as to put the river in that vicinity on one drawing and have marked the tracing Exhibit 4-A-B-C, on the lower right hand corner.

Q. All right, what does that show?

A. It shows in a clear way then what I have stated with regard to the blue prints. It is, as far as it goes, a fac simile copy of the lines and figures on those three sheets, 4-A-B and C. On that tracing, which is on a scale of 1 to 10,000, the scale on which the Mississippi River Commission surveys are platted in the St. Louis office, on these tracings I have drawn the section lines in this vicinity, showing sections 16 and 17 and some of 20, 21 and 28, covering Tullos Island as Island 98 and the Mississippi adjacent shore. Also on that tracing I have marked two lines in blue pencil along which I have written the the North border of sheet No. 5, and the Southeast border of sheet No. 6, so that these tracings may be fitted over the blue print sheets to (Fol. 273) show that they are identical.

Q. You say the blue print sheets are what?

A. They are 4-A-B and C.

Q. From that then what, if anything?

A. In order to reduce this survey sheet 4-A-B and C from the 1, to 10,000 scale to the 1 to 20,000 scale, which is the scale on which the maps of the Mississippi River Commission are printed, I have prepared a tracing reduced to one-half size, otherwise identical with the tracing of Exhibit 4-A-B and C. This second tracing is marked in the lower right hand corner "Reduced from Exhibit 4-A-B and C."

Q. What does it show?

A. The same thing. It is a fac simile of the other tracing except as to size. It is one-half the size.

Q. You call that exhibit what?

A. I will call one Exhibit 4-D and one Exhibit 4-E." (R. p. 176).

The witness placed the tracing 4-E over complainant's exhibit "I," upon which complainant's witness, C. H. West, had written "accretion." The tracing when so placed with the section lines coinciding, shows the high ground in the same location as the island, and the low ground in the same location as the river channel of 1882. Page 178:

"Q. State whether or not the 1894 survey maps of the Mississippi River Commission show the island, and sheet No. 17 shows the upper part of Island No. 98, or Tullos Island with the island above on the West, the bar line of 1894 on the Western shore?

A. Yes, sir; the bar line is on the Western shore of the Mississippi River. I will state it the other way around. The river is the Eastern end of the island.

Q. Where is the island shown?

A. The island is shown on the 1894 map which you have asked about.

Q. And you say that the only place that Captain West could have gotten the blue print which he made was from the survey of 1894 and the survey of 1883?

(Fol. 276.) A. Yes, sir.

Q. Go ahead now, Captain Marshall.

A. On the Western side of the channel of the Mississippi River marked on Exhibit "I,"

'Mid-river distance, Mississippi-Louisiana,' at the spot where Captain West wrote 'accretions,' appears the location of the low ground shown on sheets 4-A-B and C, which I have previously described.

Q. That is shown by placing your Exhibit 4-E over Exhibit I?

A. Yes, sir; with the section lines on 4-E fitting over the section lines on Exhibit I.

Q. Does any other drawing or map which you have seen, except this map, or No. 3 of C. H. West, lose sight of the Island?

A. No, I have not seen any of the maps except the Mississippi River Commission maps which have been under discussion, the 1 to 10,000, 4-A-B and C, the one-inch to the mile, 17, Exhibit 3, these are the only maps that I know of, except the one issued with the super-imposed lines on Sheet 17, showing the 1894 line, from which, I presume, Captain West prepared his Exhibit I. None of those shown was accretion, and none of them have the island left off. The Sheet 17, one inch to the mile, with the superimposed red line of 1894, shows the lower part of the upper of the two islands, and the upper part of the lower of the two islands, or Tullos (Fol. 277) Island, surrounded by the red line to the West of the Mississippi River." (R. 178).

The witness also compares Chart 45 of the 1882 survey and 47 of the 1913 survey showing that the channel in 1913 was in the same location as the channel of 1882. The witness then compares Exhibits 3 and 5 to the testimony of

complainant's witness, C. H. West, and shows the same thing:

Q. Marked Exhibits 3 and 5 to the cross-examination of Captain West?

A. One is Exhibit 5 and the other is Exhibit 3. These last two are the tracings from which the blue prints were made, that were sent to me by Captain West. When placed one over the other so that the sections coincide, the mid-river distance on the Exhibit 3 is right down the middle (Fol. 287) of the channel shown on Exhibit 5, confirming comparisons that I made on Sheet 45 and Sheet 46 of 1882 with Sheet 47 of 1913-15.

Q. If the river had gradually eaten away the Mississippi side, and had caused accretions to form from the Louisiana side across to the Mississippi side, is it probable that the river bed of 1813-15 would have been in the river bed of 1882?

A. Of course, everything is possible.

By Mr. Dale: Objected to by complainant as incompetent evidence, being purely and solely the opinion of the witness, without any reason for said opinion.

Ruling reserved by the Commissioner.

A. I have stated the facts as shown by the 1894 survey with the old bed partly filled up with sand twenty to thirty feet lower than the top of the land on the Island. I have shown that the channel filled up with sand was identically in the same location as the channel in 1882; and I now here show that the channel of 1882 is in identically the same location as the channel in 1913-15. Now, put the three together.

Q. Now, have you made that showing from the maps of the Government?

A. From the official maps of the Mississippi River Commission." (R. p. 184 and 185).

The witness refers to Captain West's testimony and shows its inconsistence and explains how the survey of the Mississippi River Commission of 1894 disproves his theory:

Q. Please refer to the blue print which is marked Exhibit I to the State of Louisiana, complainant, which is a map by Captain C. H. West, and state what that shows?

A. The most striking thing on there is the word 'accretions,' which is written on the bar, showing between the bar line of 1894 and the bank lines of 1866.

Q. You have read Captain West's testimony, have you?

A. Yes, sir; I have read his testimony." (R. p. 176 and 177.)

Bottom of page 177:

"Q. Is there anything in the Mississippi River Commission's Survey of 1894 that would justify designating this land on Exhibit I as accretions?

A. No. I have stated practically everything that was on the 1894 survey sheets, 4-A-B and C. I stated on there everything that is cognizant to this question, and there are no accretions marked there. I have studied them all, and there are no accretions marked there—bar line, timberline,,

high ground, low ground—nothing said about accretions.

The witness shows the changes in the course of the river as manifested by caving banks and buildings of the levees. This testimony is based on blue print of the Mississippi River District map of Albemarle Bend, showing changes in channel from 1882 to 1896, prepared by C. H. West, Chief Engineer.

The testimony of this witness here shows that between 1882 and 1885 the levees were first built near the head of lower Tullos Island and later near its lower end, showing caving along the chute or near the head of the island, extending down in front of the main Mississippi bank about Chotard. The caving apparently stopped in this vicinity for several years, but by 1888 had begun above and behind to the North and East of upper Tullos Island, where a levee and run-around were built in 1888 and 1889. In 1890 another levee was built from the 1889 levee down to the head of the 1883 levee. This was followed in 1892 by a new levee from the lower part of the '90 levee to the levee at Chotard. This shows that from 1888 to 1892 a complete new levee was built around Albemarle Bend to the North and East of Tullos Island. R. p. 180, 181.

The testimony of this witness shows conclusively that Island 98 did not wash away but that because of some radical change in the river, its course was changed so as to cut around the North and East of Tullos Island to make a new channel in the enlarged chute.

Defendant's contention that Island 98 was never completely washed away is supported by the following witnesses, to wit:

For the convenience of the court we have briefly digested the testimony of the most important witness beginning with that of Captain Marshall:

CAPTAIN MARSHALL:

P. 257 and 258 explain fully just what was shown by the Mississippi River Commission Survey of 1894. P. 258—the 1894 survey shows that the river had gone around the upper end of the Island and was flowing to the east of the Island. The Island could not have washed away. P. 259—Survey 1894 shows the Island was 50 feet above the water surface at the time of the survey, with trees growing on top of it. Could state from his own personal knowledge that in 1890, Island 98, or Tullos Island above, had not been washed away, but was still in existence. P. 260—Depression 20 feet lower than the Island on the west of the Island and in the same location as the river of 1882. P. 271—Mail boat "Issaquena" navigated chute next to the main shore in 1890. P. 275—Nothing in the Mississippi River Commission Survey of 1894 that would justify Captain West to write the word "accretions" on his map—Exhibit 1. Island 98 is shown on the map of the 1894 survey. P. 276—Every Mississippi River Commission Map shows Tullos Island, or Island 98, and none of them show accretions. P. 279—Levee District Map shows that the Chute which ran east of Island 98 was caving on the Mississippi side as far back as 1883 and 1884, requiring a run-around

to be built on the Mississippi Levee adjacent to the lower end of the Chute. P. 280—The next is a levee built in 1888 and 1889 on an extensive run-around at the upper end of the Island in the location of Duvall's Landing. In 1889 a small run-around was built above Duvall's Landing. In 1890 a run-a-round was built from the run-a-round of 1888 and 1889 down to the run-a-round of 1883, showing that caving had progressed toward the northeast of Island 98 and the adjacent island, and that it continued as shown by successive dates—1893, 1894, 1895, 1896 and 1897. There is another here 1892 running from the 1890 extension down to the middle of the 1883-1884 run-around. The location of all of these levees show undoubtedly that the river had caved north and east of Island 98. P. 285—Exhibit 6-F, 1913, Map River, same place, 1882. P. 287—Was shown that the channel filled up with sand, was identically in the same location as the channel of 1882, and it here shows that the channel of 1882 is in identically the same location as the channel of 1913, this showing made from the official maps of the Mississippi River Commission.

Captain Marshall corroborated by the following witnesses:

C. F. Hume, Pages 297, 300, 321.

Lawrence Towns, Page 349

Earnest Newman, Page 72

George Newman, Page 80

Capt. W. H. Reed, Pages 141, 145, 146

E. T. Purnell, Page 426.

Captain West, P. 202—says that river known as Albemarle Bend filled up after the 1912 cut-off, so that in two or three years there was no flow through the bend except in the high water.

Captain Reed says, P. 147—That Albemarle Bend was filled at the north end so that boats could not pass through by 1916.

Captain Prince, P. 15-16—Could get through in 1916 if gauge was 12 feet, but by1920 the channel was entirely filled.

(The River Commission Chart 47 shows that the water was 40 feet deep at this place in 1913.

Now if this river filled entirely in seven years and ceased to flow in three years, then people could have walked along there within five years after the cut-off. This same thing could have happened in 1823 and 1882.)

CAPTAIN PRINCE: (Begins 1897)

Could not go through the Albemarle Bend in 1916—Pages 15 and 16—Trees 8 to 10 inches when he first knew it—it was about 1900. Variety of Cotton wood and willow. P. 17—By 1920 upper end of Albemarle filled entirely. P. 33—Water backs up in 1823—River channel.

EARNEST NEWMAN: (Begins 1897—9 years old.)

P. 52—Levee 50 or 100 yards behind our house. Levee later moved 2½ miles back. P. 52—Timber outside main

shore, cottonwood and willow. P. 55—Willow and cottonwood on Newman's Towhead. P. 60—Knew of St. Francis' Chute. P. 65—A chute running up from Henderson. P. 68—St. Francis comes down the main shore, not in the Island. The current in high water will pass up through here. We call that St. Francis' Chute. P. 72—back to Island 98, water ran through the depression so he had to use a boat to get to the cattle, where the river afterwards cut through (1912 cut-off.)

GEORGE NEWMAN: (Begins 1893—7 years old.)

P. 79—St. Francis Chute, a depression at the original mainland and the bank—what bank there is left, is right there now. Timber on bar—cottonwood and willow—says the house was 100 yards from some-where and from the question indicates that it was on the bar, but his brother Earnest, and his uncle Beard, locates it on the main land 100 or 150 yards back from where the bar begins. P. 80—There was a depression that had no timber on it, beyond that was timber. Timber on Towhead was cottonwood and willow. Evidently this was the same depression that his brother spoke of (P. 72) when the 1912 cut-off was made.

E. T. PURNELL: (Born 1866.)

P. 422—Says there was virgin timber on the Island when he went there, 1880, oak, gum and cottonwood. P. 423—Boats did run up into the chute if they had freight for their place. P. 425—Testified from 1867 (when he was one year old). Island disappeared entirely in 1884 or 1885, during high water. Washed out entirely (in one or the other of these years). P. 426—In high water boats would make

the cut-off west of Island 98. P. 433—In high water boats used to make a cut-off through there (clearly speaking of the 1823 river channel). (Date 1878). P. 439—Chart 46—Survey was wholly in Warren County. P. 441—If the witness was shown Chart 46, it was wrong as he stated, because 46 did not show the Island 98 at all.) P. 442—Trip after his brother discussed P. 432-433 was fixed as in 1878. P. 458—Island went out entirely in 93-94-95, one of these years during high water. (If this evidence is true, it went out by an avulsion, and Mississippi title would not be affected. However Government Survey 1894, disproves him as to 93 and 94. P. 459—Boats ran chute between Island 98 and main Mississippi shore.

Captain Prince first became acquainted with that section of the river in 1897—P. 6.—Earnest Newman was born in 1888. Can remember as far back as 1897—P. 50—George Newman was born in 1886—P. 74—Can remember as far back as 1897—P. 50. George Newman was born in 1886—P. 74—Can remember as far back as 1893. I. B. Beard was born in 1866 but has never seen an island in that part of the river 'till the cut-off in 1912—P. 109. W. H. Reed began steamboating in 1897, was familiar with the river from 1900, was at Henderson a month or six weeks in 1894.

C. F. HUME: (Witness for defendant).

P. 297—Went to Chotard 1896. Remained there 'till 1907. It was an island in high water. P. 300—Steamboats ran west of the Island in high water. Following the old Mississippi River channel, could tell where the channel was

in low water, from the timber on the Louisiana side, and the low depression there with some small lakes. P. 301—Timber on Island—cottonwood and willow. P. 311—Timber on Island—cottonwood and willow. P. 312—Some cottonwood 3 feet in diameter (about 1909). P. 314—Says the store was right back of the landing (Chotard Landing) and the Island was west of the store. P. 321—Has known steamboats to go through that depression west of the Island in high water.

LAWRENCE TOWNES: (Fifty-nine years old.)

P. 346—Went to Chotard in 1880. P. 361—St. Frances Chute. P. 349—A part of the Island. Scruggs Island as he knew it had been there all the time. Boats would go both sides of the Island in high water. P. 370—St. Francis Chute filled up. P. 374—"I can't say that it was Newman's Point I Calls it Mississippi." P. 377—"I calls it, I would call it Mississippi." P. 377—"I calls it St. Francis' Chute." P. 378—All of Scruggs Island did not wash away in high water, there would be none, where I lived, but in low water there would be some of it there. (Just overflowed.)

E. J. ALBRITTON:

P. 383—Familiar in general way with the land involved in the litigation, Louisiana vs. Mississippi. P. 387—Sec. 21—Island 98. P. 388—Clay soil. The old channel (Chute Channel) was clearly discernable and east of that was small willow. P. 389—1823 river channel. P. 390—1823 river channel—Continued. P. 391—1823 river channel—Continued. P. 392—1823 River channel—Continued.

P. 393—1823 river channel—Continued. P. 394—Chute between Sec. 30 and 31 (Old Chotard Chute). P. 395—Chute and timber on Sec. 30. P. 396—Timber on Sec. 30. P. 397—Timber on Sec. 30 and 29. P. 398—The present river channel and timber on Section 21. Present river channel as related to Tullos Island. P. 402—Timber, soil, Island 98. P. 400-412.

E. J. Albritton testimony as to 1823 river channel supported by the following witnesses:

CAPTAIN PRINCE:

P. 33—Water backs up in 1823—river channel.

EARNEST NEWMAN:

P. 60—Knew of St. Francis' Chute. P. 65—A chute running up from Henderson. P. 68—"St. Francis' comes down the main shore, not in the Island, the current in high water will pass up through here, we call that St. Francis' Chute."

GEORGE NEWMAN: (Referring to St. Francis' Chute.)

P. 79—A depression at the original main land and the bank, what bank there is left, is right there now.

LAWRENCE TOWNES:

P. 361—St. Francis' chute. P. 370—St. Francis' Chute filled up. P. 377—"I calls it St. Francis' Chute."

E. T. PURNELL:

P. 432 and 433—Boats used to make the cut-off when the water was high. (The date is fixed as 1878 when he

went after his brother). (Questions and answers show clearly that he was talking about 1823 river channel.)

CAPTAIN REED:

P. 141, 145 and 146.

CAPTAIN WEST:

P. 202.

Captain Prince, Captain Reed and Captain West showing that the River at Albemarle Bend filled up after the cut-off of 1912, so that within three years the water ceased to flow through, and that it was entirely filled by 1920. That would enable a person to walk on dry land where the river had been five or six years before. The same thing could have happened to the river of 1823, and to the river of 1882, and the complainants have not proven that it did not happen. The evidence is strong that both rivers filled gradually, especially the 1823 river, as boats traveled the channel in high water as late as 1878—(Purnell P. 432-433)—and water flows through there in high water even yet.

CAPTAIN WEST: (P. 234.)

> "Q. Then you have sheet 45 covering one section of the river to sheet 46 covering the adjoining section of the river together and projected upon that the Section, Township and Range lines?
>
> A. Yes Sir, the sheet 45, however, covers all of the territory in question. Sheet 46 is merely added there for information as to the radical changes that had taken place in the river to the south of the territory in question.

Q. It does not cover quite all of it does it? Is not there where you pasted it together? Right there?

A. Yes Sir, that is right.

Q. This is sheet 45, and it comes down here to the North End of Island 98. Do you see here? Right there.

A. Yes Sir, the two sheets are put together so that you will have the whole thing before you. You unedrstand? Instead of having to try to adjust them on a table, they are put together just as one would have run into the other had both sheets been made on one piece of paper. They are adjusted by latitude and longitude.

Q. Both sections of that chart show the latitude and longitude?

A. Yes Sir."

(Comment: Defense Council objected to this Exhibit when it was offered but the Special Master based his report largely on this map, calling it Chart 46. If it is a fact that Chart 46 was pasted over Chart 45 up to the north end of Island 98 it does not correctly show the true situation.
I. B. BEARD: (Witness for complainant).

P. 111—definitely locates the Newman residence on the old main bank 100 or 150 yards back from the beginning of the bar. Cottonwood timber on the main bank between the house and the bar. P. 112—Timber on bar was all cottonwood and willow. P. 114—Did not know the place he called the towhead had ever been severed from the Louisi-

ana shore prior to 1912. No timber except cottonwood and willow on towhead.

CAPTAIN W. H. REED: (Witness for complainant).

P. 128—Acquainted with the river there since 1894. Was camped at Henderson a month or six weeks. P. 136—About 1900 he became acquainted with the channel of the river. P. 140—Would land at the foot of the Island, because there was slack water (1900). P. 141—Timber on towhead—cottonwood and willow. Talks about the Island in 1900. P. 141—The Mississippi River commenced to wash out the depression between this towhead and the main timber line on the Newman property, and it was washed out to quite an extent that year, and made the cut-off virtually, but did not clean it entirely out 'till 1913. (Supporting Captain Marshall). P. 143—Prior to cut-off 1912, he still talks of the Island. P. 145—Between the towhead and the old timber line there was a depression of white sand, and "I think in extremely high water some very small boats navigated that island, or depression. P. 146—More about the depression. Old channel began to fill up at the head of the island—at the head of Newman towhead. P. 147—Steamboats could go up and down that portion of the river designated as Albemarle Bend, for about four years after the cut-off of 1912. After 1916 even little boats could not pass through the North End. P. 149—Began steamboating 1897. P. 181—Newman towhead same location as part of Tullos Island. Began in 1897 was familiar with the river in 1900.

CAPTAIN WEST: (Witness for complainant).

P. 185-186—Mississippi River Chart 45 covers all the

land in litigation, but to show Township and Sectional connections, Chart 46 has been attached showing the lands south as far as Eagle Bend—(On this Chart 46 is where the Master gets his gum, oak and hackberry). P. 201—Speaks of Hopkin's Island and Island 98 as being the same island. P. 202—River by Albemarle Bend filled at the north end in two or three years so that no flow passed around by Albemarle Bend, except in high water. P. 218—The survey 1894, did not take in the topography. It only took in the change in the position of the river alone. P. 223—Explanation—Exhibit 1, and G, H, I, J. P. 225—The word accretions—where he got it. P. 227—Conflicting evidence as to river. P. 228-229—1894 survey again. P. 234—Chart 45 covers all the territory in question. Sheet 46 is merely added there for information as to radical changes that had taken place in the river to the south of the territory in question. (While sheet 45 covers all the land in question, and sheet 46 shows none of the land, the sheet 46 being wholly as to Mississippi, in Warren County, it apears that sheet 46 was pasted over sheet 45 up to the north end of Island 98, which would cover Island 98, and show land in Warren County instead.

JOSEPH V. DeLAHUNT: (Seventy years old).

P. 475—Says that in 1897 he ran a loaded steamboat right over the top of Island 98. (Every witness in the case says that Island 98, or Newman's towhead was there in 1897, so if the Captain is right, there must have been extra high water at the time). P. 477—Could not land at Island 98 at all. (Captain Reed and Captain Prince landed there because there was slack water.) P. 478—Says

that Island 98 disappeared entirely in 1897, or 1899. (He admits then that the Island was there up to 1897. All other witnesses say that it was growing larger rapidly, at that date). P. 480—Could go over the bank or any where in high water. P. 486—Says he sunk "Kate Dixon" at Hopkins Island, but had previously said that he sunk the "Kate Dixon" at Mayersville.

WILLIAM MILLER:

P. 497—Island 98 did not all wash away. The lower end all washed up, the upper end did not wash off. After the washing stopped, it built back in same place.

EXHIBITS

Defendants exhibits A, N, and R, pages 162-168 were placed in evidence for the purpose of showing that from the time of the earliest governmental survey the State of Mississippi had exercised acts of dominion over and claimed as its own, the property here in question. The state of Louisiana neither exercised, nor attempted to exercise in any way, dominion or control over the property at any time between the date of the earliest survey and the present time.

Defendant's exhibit "A" is a certified copy of the land assessment rolls of Issaquena County, Mississippi, covering assessments of the lands here in controversy from the year 1848 to 1926. During this entire period of time these lands were assessed by Issaquena County for taxation and appear on its tax assessment rolls. The assessment shows that the property, and especially Island 98 or Tullos Island, during the period of time for which the State of Louisiana claims the island to have been completely washed away, that is be-

tween the years 1882 and 1894, was continuously assessed on the tax rolls of that County. The assessments also show by the varying number of acres assessed, that the ravages of the river on the island were considered.

WHAT THE EXHIBITS SHOW

Defendant's Exhibit "A" is a certified copy of the land assessment rolls of Issaquena County, Mississippi, covering assessement of the lands here in controvesry from the year 1848 to the year1926. During this entire period of time, a part of sections 20, 21, 28 and 29 were assessed. The assessment roll shows that during this time these lands, in fact, were an island; and on the rolls, in a number of cases, after the sectional description of the lands appear the word "island." The number of acres comprising the territory assessed varied from year to year, as new assessments were made. At no time during this period do the assessment rolls leave off all of the territory originally surveyed as Tullos Island.

Defendant's Exhibit "B" is a certified copy of the record of lands sold to the State of Mississippi for delinquent taxes in Issaquena County, covering the territory here in question. This exhibit shows that in the years 1869, 1879, 1880, 1881, 1888, 1890, 1891, 1895, 1897, 1898, 1900, 1901, 1902, 1906, 1907, 1912, 1915, 1922, 1923, 1924 and 1925 part of the lands here incontroversy were sold by the State of Mississippi for delinquent taxes.

Defendant's Exhibits, "G," "H", and "I" are certified copies of the assessment roll of East Carroll Parish, Lou-

isiana, showing assessment of Willow Point plantation for the year 1876 to 1926. These assessments show that the State of Louisiana during this period of time assessed for taxation no part of the land here in controversy, either as lands originally surveyed, or as lands attached by accretion to the original survey of the township in which Willow Point was located. These exhibits show that in 1876 Willow Point was assessed for taxation with the number of acres as 719. That in 1880 the assessment was reduced to 640 acres, and in 1882 to 563 acres. That in 1886 the assessment was reduced to 375 acres, in 1889 to 259 acres, in 1906 to 150 acres, in 1907 to 50 acres, and in 1912 was assessed as 160 acres, which is the present assessment.

Defendant's Exhibit "J" is a certified copy of a deed from Mrs. Annie E. Newman to Walter A. Newman dated the 26th day of October, 1882, being a deed conveying a portion of Willow Point plantation. This deed contains the following provision:

> "It being well understood by vendor and vendee that by reason of the caving of the banks of the river, the said Willow Point plantation, according to recent surveys has been reduced in quantity to 600 acres.

Defendant's Exhibit "K" and "M" are tax deeds executed by the sheriff and tax collector of East Carroll Parish, Louisiana, selling a part of Willow Point plantation for the non-payment of taxes for the years 1893 and 1907.

Defendant's Exhibit "L" is a certified copy of a deed

from J. S. Milliken to J. A. Craig conveying part of Willow Point plantation.

Defendant's Exhibit "N" is a certified copy of power of attorney and deed from George R. Newman, et al, to Rufus H. and Andrew B. Learned, conveying a part of Willow Point plantation.

These deeds were introduced in evidence for the purpose of showing that neither the State of Louisiana, nor the owners of Willow Point, at any time until the filing of this suit, claimed any part of the lands which are here in controversy.

Exhibits 1 and 2 (R. p. 170-171) are United States Land Office township maps with Mississippi river banks in Louisiana, (1824) and in Mississippi (1823) sketched.

Exhibit 3 (R. p. 171), Complainant's Exhibit "C", Mississippi River Commission Sheet 17, merely is a small scale 1 inch equal one mile, map for non-technical use, made by reduction from the Charts 45 and 46, Survey 1882, scale 1:20000, which are a little more than three times larger than the small scale sheet. Sheet 17 shows the general outline of the river from mile 562 to 595; that is the shore line of main banks and the bars. Also the general features of the land such as the names of owners, timbered or cultivated; location of levees, property lines, parish lines, landings, names of river bends and large lakes, but no details, Government lights, reference points, contours, elevations or soundings. Willow Point is shown in Louisiana about mile

567 and Chotard Landing in Mississippi about mile 571, with Tullos Island divided into two parts, the lower marked Island No. 98, lying on the Mississippi side between the Point and the Landing. Lack of exactness in detail is evidenced by the difference in the bar line opposite Chotard, as shown on Sheet 17 and on Chart 46, Exhibit 6 C. The indentations of the bar lines shown on the larger scale chart 46, do not appear on Sheet 17, though the small scaled map was made from the larger ones and published in 1883, one year after the large 1882 maps issued.

Testimony of Capt. H. M. Marshall states (R. p. 175), "The mail boat landed at Albemarle Landing against the levee during high water of 1890." showing the width of the chute from the levee over to the upper Tullos Island which was there then. (Both upper and lower Tullos Island were there and the blue print shows the width of the chute was 2,000 feet from the levee to the trees on the upper Island. That is half the width of the river from Willow Point across to upper Tullos Island in Section 20).

The close approach of the widened chute to the lower end of the 1888-9 levee compelled the building, after high water of 1890, of an extension levee from the rear lower angle of the 1888-9 levee down the chute 3,500 feet to the 1883 levee at the head of lower Tullos Island. This was followed in 1892, by building a new levee from the rear lower corner of the 1890 levee down over two miles to the levee at Chotard. This shows that including 1888-9 and 1892 working seasons, a complete new levee was built around Albemarle Bend with the levee above Albemarle set back 3,000

feet from the east bank of the chute and set back 2,000 feet from the chute bank below Albemarle. In 1893 a loop a mile long was built to cover threatened levee breach at the junction of the 1888-9 and 1890 levees. When the 1894 survey was made, nearly all of 1888-9 and 1890 levees covered by the 1893 loop had caved into the river, and the main bank of the Mississippi shore in 1894 was 6,800 feet east of the east bank of Mississippi River in 1882 where the river then was flowing along the west side of Tullos Island. The blue print shows the main Mississippi shore in 1906 when this blue print tracing was made by Captain West 1000 feet east of the Mississippi Shore in 1894.

ARGUMENT

There is little difference between complainant and defendant in their conceptions of the law of accretion and avlusion. As applied to this case, counsel are agreed on the proposition that where a navigable river is the boundary line between states, and the channel of navigation is changed by nature, or gradual processes known as erosion and accretion, the boundary follows the varying course of the stream, but that where an evulsion occurs in such stream, the resulting change in the channel does not change the boundary, but that it remains in the middle of the old channel as it existed prior to the avulsion.

Nebraska vs. Iowa, 143 U. S., 539, 36 L. ed. 186,

Missouri vs. Nebraska, 196 U. S. 23, 49 L. ed. 372,

Arkansas vs. Tennessee, 246 U. S. 158, 62 L. ed. 638,

Oklahoma vs. Texas, 260 U. S. 606, 67 L. ed. 428.

These propositions will be, therefore, in this brief referred to as settled law. There are other legal propositions, however, which counsel for defendant conceive to be material to the determination of this cause, and these propositions will be discussed in their relation to the testimony in the case, treating such testimony as nearly as possible in chronological order.

I

1823-1882

The burden of proof in this case is upon the complainant. The fact that there is involved a disputed boundary line between two states does not change the general rule of law in this respect; the same rule being followed as is applicable in the determination of boundary suits between private individuals.

Rhode Island vs. Massachusetts, 12 Peters, 734, 9 L. ed. 1233.

Nor does the fact that the boundary here in dispute is found in running water vary the general rule in this regard, it being well established that in cases of this character the same rules of law with reference to accretion and avulsion are recognized as in cases between individuals.

City of New Orleans vs. United States, 10 Peters, 662, 9 L. ed. 573,

Nebraska vs. Iowa, 143 U. S. 593, 36 L. ed. 186,

Missouri vs. Nebraska, 196 U. S. 23, 49 L. ed. 372,

Arkansas vs. Tennessee, 243 U. S. 158, 62 L. ed. 683.

The rule is also settled that there is a presumption in favor of the permanency of boundary lines, and where a party asserts material changes in the course of a boundary river such as will affect the boundary line, the burden is upon him to prove such changes.

State of Tennessee vs. Muncie Pulp Company, 119 Tenn., 47, 104 S. W. 437,

Oklahoma vs. Texas, 260 U. S. 606, 67 L. ed. 428.

Counsel for complainant in their brief apparently admit the foregoing to be a correct statement of the law, their original brief at page 120 containing the following:

> "While the burden of proof to show the changes in the original boundary is on the one alleging the change complainant has fully discharged such burden."

It is elementary law that before riparian rights can attach to land, the land itself must be contiguous to the water, actual contact therewith being necessary.

Farnham on Water and Water Courses, Vol. 1, p. 304,

Kinney on Irrigation and Water Rights, Vol. 1, pp. 760 and 761,

Saulet vs. Shepherd, 4 Wallace 502, 18 L. ed. 446,

Posey vs. James, 75 Tenn. (7 Lea) 98,

Fulton vs. Frandoley, 63 Tex. 330,

Nugent vs. Mallory, 145 Ky. 824, 141 S. W. 850,

Wilson vs. Watson, 144 Ky. 352, 138 S. W. 283, Ann. Cas. 1913-A, 774.

Where a party claims lands as accretions, the burden, therefore, is not only upon him to establish the fact that the lands were, in fact, formed by accretion, but he also has the burden of proving that such accretions attached to lands which belonged to him and were contiguous to the water.

Green vs. Witten, 200 Ky. 725, 255 S. W. 519,

Tillotson vs. Fulp, 172 N. C. 499, 90 S. E. 500,

Mann vs. Archbell, 186 N. C. 72, 118 S. E. 911,

Ball vs. McDuffy, (Tex. Civ. App. May, 1919) 212 S. W. 844,

Producers Oil Company vs. State, (Tex. Civ. App. May, 1919) 213 S. W. 349,

Land vs. Dunn, (Tex. Civ. App. Nov. 1920), 226 S. W. 801,

Lennox vs. Isbell (Tex. Civ. App. Dec. 1922), 245 S. W. 728,

Petty vs. Oil Company, (Tex. Civ. App. Oct., 1923), 254 S. W. 565.

From the foregoing authorities, it is evident that before the State of Louisiana could establish its case it is not only necessary that it *overcome the presumption that* boun-

dary lines once established are permanent, but it also must meet the burden of proof and establish by a preponderance of the evidence, the following facts:

1. That accretions were added to territory on the westward side of the Mississippi River.

2. That these accretions were added to Louisiana territory, or, in other words, that Louisiana territory at the time the accretions were formed, was contiguous to the water.

The defendant, State of Mississippi, contends that the complainant has failed to meet the burden imposed upon it in each of the two foregoing particulars. As has been stated in the foreoging pages of this brief, testimony of complainant's witness, Charles H. West, shows that between the years 1824, when the first survey of the Louisiana territory at the point in question was made, and the making of the map of the Mississippi River Commission in 1882, the river had moved its channel eastward about a mile and one half. The presumption being that boundary lines once established are permanent, it was incumbent upon the State of Louisiana to prove by a preponderance of the evidence that this change in the channel of the river between these years was the result of accretion rather than of avulsion. If the change was the result of accretion then the boundary followed the river, while if the change was caused by avulsion, the boundary remained fixed as it was prior thereto. In order to meet the burden imposed upon it in this respect and to prove that the river moved its channel gradually and to the eastward from its 1824 to its 1882

location by accretion, the complainant introduced only one witness Charles H. West. The testimony of this witness is discussed in the preceeding pages of the brief, and for that reason will only be touched lightly at this point. The witness does not testify from personal knowledge, but only from the maps introduced in evidence as exhibits to his testimony, they being the 1824 governmental township plat of the Louisiana territory at the point in question; (Complainant's Exhibit A); a blue print prepared by himself purporting to show the Louisiana shore line in 1866 (Complainant's Exhibit "G"); a map of Hopkins Island, an island in the river in the vicinity of the territory in question (Complainant's exhibit "BB"); and Mississippi River Commission Chart Number 45, Survey of 1882 (Complainant's Exhibit "M"). The purported map of 1866, R. p. 147, was not introduced in evidence, and the blue print based on such was not admissible in evidence, because not founded upon any facts disclosed by the record, and being in effect hearsay evidence. The 1870 map of Hopkins Island, R. p. 148, did not purport to be a map of the shore line of the river but only of the island itself. With these maps furnishing the basis of his opinion, the witness testified that the Mississippi River gradually moved to the eastward by erosion of the Mississippi shore, and the Louisiana shore line progressively followed it, building by accretion, until it reached its 1882 channel.

This is the only testimony which is offered by the complainant to overcome the presumption that the 1824 boundary line was permanent and to meet the burden imposed upon it of showing how the river moved from its 1824 to its

1882 channel. The weakness of this testimony is evident when it is considered that all of this witness's testimony was opinion evidence, highly speculative and based upon facts of no evidentiary value. Especially does it seem weak and unconvincing when the testimony of other witnesses, both for complainant and defendant, describes the physical conditions and surroundings in this area between the location of the 1823 channel and the 1882 channel.

Complainant's witnesses, George Prince, R. p. 39, George Newman, R. p. 55, 56, 58, 59 and 60, and defendant's witnesses, Lawrence Townes, R. p. 232, 233, and Etna J. Albritton, R. p. 245, 248 and 251, all testify that they are familiar with a depression in this area on the Louisiana mainland running in the approximate location of the river channel of 1823. This depression is known locally as "St. Francis Chute", and the defendant's witnesses testify that it is known as the old river channel of 1823. The defendant's witness, Allbrittian, with a surveyor located this old channel showing it to be in practically the same location as the river channel in 1823. His testimony shows that the bank line of the old channel was clearly discernable on each side for a great part of the way along the chute, R. p. 245, 248, 251, and that in times of high water it was filled from its northern to its southern limits. Chart 45 of the 1882 Survey and Chart 47 of the 1913-1915 Survey both clearly show this old river channel although not designated thereon by name.

The fact that this old river channel is clearly discernable is positive proof of the fact that the river had not changed

its location from its 1823 to its 1882 channel by accretion. It is common knowledge that if this change had been by accretion, both banks of the old channel could not remain, because as the accretion would gradually build to the shore and as the river would gradually move to the eastward, the east bank of the river would necessarily be worn away and destroyed. Where both banks of the old river are shown to still be in existence as is the case here, then there is no conclusion to be reached other than that the river suddenly and violently changed its course so as to leave the old river bed dry and the banks on each side still standing.

The case of *Simpson vs. Martin*, 174 Ark., 956, 298 S. W. 861, on its facts is practically identical with the case at bar. In that case the court said:

> "It is the contention of the appellant Simpson that the south bank of the river gradually caved and washed away until the bend of the river had entirely disappeared, and that, as this was done, the north bank gradually moved southward by the accretions to that shore, and that the original lands to which appellees had a record title gradually disappeared and became a part of the channel of the river, until finally the accretions to appellant's lands occupied the area which once comprised the land of appellees, together with other lands contiguous thereto and south thereof, all of which appellant Simpson claims as an accretion to his land."
>
> "Appellees deny that these lands were an accretion to appellant's land. On the contrary, they assert their land never disappeared through the action of the river, but has remained as original

land at all times since the Government survey, which was made in 1826, and, in addition, they say they have title to certain lands also involved in this litigation as an accretion to their own land. They also say that at some time subsequent to 1826, the river changed its course as the result of an avulsion or cut-off, and the court below sustained this contention, and entered a decree accordingly, and, upon this finding of fact, apportioned to appellees and certain other riparian owners the accretions to lands which are south of the river according to the survey of 1826. The apportionment of this accretion was one of the subjects involved in the cases consolidated with the case here appealed, but, as the parties to those suits have not appealed, we need not consider this feature of the case.

The appeal of the appellant Simpson does raise the question of the correctness of the court's finding of fact, but the appeal presents no other question than this question of fact, except only the question of law as to the burden of proof concern the manner in which the river changed its course.

The question for decision may therefore be stated as follows: Did the river leave the bend shown by the survey of 1826 by the process of accretion, or by an avulsion or cut-off?

In a case presenting many issues of fact similar to the present case, the Supreme Court of Tennessee, in the case of *State vs. Muncie Pulp Co.*, 119 Tenn. 47, 104 S. W. 437, held (to quote a syllabus), that 'the presumption is in favor of the permanency of boundary lines, and the burden of proof is on the one averring that the location of the line has been changed by the action of the

forces of nature.' See also 9 C. J. 271, and *Bissell v. Fletcher*, 27 Neb. 582, 43 N. W. 350.

Inasmuch as appellees are in possession of land shown to be land by the original Government survey, the patents from the United States to the State of Arkansas, and from the State to appellees' predecessor in title, we think the burden was upon appellant to show that the land described as such disappeared and later formed as an accretion to his own land, and this would be true whether he was the plaintiff or the defendant in an action in which that question arose."

In the case of *Baumhart vs. McClure*, 21 Ohio, App. 491, 153 N. E. 211, title to a certain lot bordering on Lake Erie was involved. This lot was surveyed in 1837 and appeared on the tax rolls from 1837 to 1853, from which time until shortly before the filing of the suit, it was under the waters of the lake. When the lot reappeared, the holder of the title entered upon the same claiming it as his own. The owner of the lot abutting thereto brought suit, claiming that this lot as restored was added to his lot by accretion, and, therefore, is his own. There was no proof in the record showing whether this lot was washed away gradually by erosion or whether it suddenly disappeared as the result of an avulsion. The court in holding that the plaintiff must fail because he had not met the burden of showing how the disappearance of the lot occurred, had the following to say:

"In view of the fact that the defendant has a connected chain of title to lot 434 by deed of conveyance, the burden of proof rests on the plaintiff

to show such a state of facts as would deprive the defendant of that title. As a riparian owner may gain land by accretion of reliction, so he may likewise lose land by the slow process of erosion, and, if the land owned by the defendant, and her predecessors in title, was taken from them by the slow process of erosion, it would ordinarily be forever gone. This, however, would not be the case if lot 434 was washed away by a storm or storms resulting in a sudden avulsion."

The case of Oklahoma vs. Texas, 260 U. S. 606, 67 L. Ed. 428, was a suit by Oklahoma against Texas to establish a portion of the boundary line between the two along the Red River. The boundary between these two states is a part of an old one between the territories of the United States and the Spanish Possessions to the southwest, which was defined in the Treaty of 1819 and ratified in 1821. The court construed this boundary to be on the south bank of the Red River as it existed in 1821, subject to application of the doctrines of erosion and accretion and of avulsion to any intervening changes. The State of Oklahoma contended that the channel of 1821 was different from the channel as it exists today, and that it is entitled to territory which is now south of the present banks of the river. There were no maps, surveys or records made of the river showing the situation existing in 1821, nor were there human witnesses to testify relative to the situation at that time. In passing on the question of whether there had been a change in the channel of the river, by avulsion as contended by Oklahoma, the court said:

"Common experience suggests that there probably have been changes in this stretch of the Red

> River since 1821, but they cannot be merely conjectured. The party asserting material changes should carry the burden of proving them, whether they be recent or old. Some changes are shown here and conceded. Others are asserted on one side and denied on the other."

Under the authority of the foregoing cases, the State of Mississippi earnestly contends that the State of Louisiana has failed to prove by a preponderance of the evidence that the Mississippi River changed from its 1823 to its 1882 channel as a result of accretion.

Not only is this proof insufficient to overcome the presumption of the permanency of boundary lines and to prove by a preponderance of the evidence that the boundary shifted as alleged by the complainant, but the proof offered by the defendant with reference to the physical facts and circumstances is so strong and it so thoroughly refutes and contradicts the opinion evidence of the only witness for the complainant as to show practically beyond dispute that this change was a result of avulsion.

If this be true, then the entire case of the State of Louisiana must fail because its base has not been established; there being no proof that accretions ever attached to land which in fact belonged to the State of Louisiana. In other words, the State of Louisiana even though it showed that accretions attached to the western shore subsequent to the year 1882, yet has failed to prove that they attached to land belonging to Louisiana and contiguous to the river.

II.
1882-1913

All of the testimony offered by complainant with reference to accretions attaching to the west shore of the river, is given regarding conditions existing subsequent to the year 1882. The contention of complainant and its entire case in this regard is based on the assumption that Tullos Island completely washed away, and that the Mississippi River moved eastward over the site of the island; adding by accretion to Willow Point in the State of Louisiana; that later the river made a cut-off across the accretion leaving a new island—Newman Towhead, in Louisiana. If the complainant has established these facts, then under the rule laid down by this court in the cases of Iowa vs. Nebraska and Arkansas vs. Tennessee, supra, the territory in question belongs to Louisiana, provided the complainant has first established its contention discussed in subdivision I of this argument.

The contention of the defendant is that Tullos Island did not wash away, but that the channel around the island changed from the west side to the east side thereof, the old channel filling up until the island became connected to the Louisiana shore; that it then continued to grow by accretions added thereto on its eastward side until the year 1912, when the river returned to its old 1882 channel leaving this territory again an island but greatly enlarged by reason of the accretions added thereto. If these facts be established by the evidence, then Tullos Island, or Newman Towhead, as it is designated on Chart 47 of the Mississippi River Commission Survey of 1913-15, is Mississippi terri-

tory; the change in the channel of the river around the island not affecting the boundary line between the states.

Missouri vs. Kentucky, 11 Wallace 395, 20 L. ed. 116,

Indiana vs. Kentucky, 136 U. S. 1, 34 L. ed. 329,

Arkansas vs. Tennessee, 246 U. S. 158, 62 L. ed. 638.

In the case of *Missouri vs. Kentucky*, supra, the question for determination was the establishment of a part of the boundary line along the Mississippi River between the states of Missouri and Kentucky. The territory in controversy was Wolf Island, which at the time of the filing of the suit, was on the Missouri side of the main channel of the river. The case turned on the proposition of whether or not at the time the territory of Kentucky was formed with her boundary on the west fixed as the middle of the Mississippi River, Wolf Island was on the Missouri side, or on the Kentucky side of the middle of said river. The court laid down the following rule of law governing the case:

> "It follows, therefore, that if Wolf Island, in 1763, or in 1820, or at any intermediate period between these dates, was east of this line, the jurisdiction of Kentucky rightfully attached to it. If the river has subsequently turned its course, and now runs east of the island, the status of the parties to this controversy is not altered by it, for the channel which the river abandoned remains, as before, the boundary between the States, and the island does not, in consequence of this action of the water change its owner. Heffter, p. 143, sec. 66; Caratheodery Du. Droit Inter., p. 62."

In the case of *State of Indiana vs. State of Kentucky*, supra, the question involved was the ownership of what is known as Green River Island, which at the time of the filing of the suit was connected to the Indiana shore by an old filled-up channel of the Ohio River. When Kentucky was created as a territory, its northern boundary at the point in question as defined in the act of creation was construed by the court to be the low water mark of the Ohio River on the north side of the channel. At the time of the creation of the territory the channel of the river ran between Green River Island and the Indiana shore. By a subsequent change in the river, however, this old channel was abandoned and became filled up so that the island was attached to the Indiana mainland. Under these facts, the court laid down the following rule as governing the case:

> "If when Kentucky became a State on the 1st of June, 1792, the waters of the Ohio River ran between that tract, known as Green River Island, and the main body of the State of Indiana, her right to it follows from the fact that her jurisdiction extended at that time to low-water mark on the northwest side of the river. She succeeded to the ancient right and possession of Virginia, and they could not be affected by any subsequent change of the Ohio River, or by the fact that the channel in which that river once ran is now filled up from a variety of causes, natural and artificial, so that parties can pass on dry land from the tract in controversy to the State of Indiana. Its waters might so depart from its ancient channel as to leave on the opposite side of the river entire counties of Kentucky, and the principle upon

which her jurisdiction would then be determined is precisely that which must control in this case."

In the case of *Arkansas vs. Tennessee*, supra, the court held that where the Mississippi River suddenly abandoned its old channel and formed a new one, as a result of which the old channel filledup and became land, the filling up of this old bed should not be treated as accretion, but as the ultimate effect of avulsion. On this proposition the court had the following to say:

"Certainly it can not be regarded as having the effect of carving out an exception to the rule that where the course of the stream changes through the operation of the natural and gradual processes of erosion and accretion, the boundary follows the stream; while if the stream leaves its former bed and establishes a new one as the result of an avulsion, the boundary remains in the middle of the former channel. An avulsion has this effect whether it results in the drying up of the old channel or not. So long as that channel remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when the water becomes stagnant, the effect of these processes is at an end; the boundary then becomes fixed in the middle of the channel as we have defined it, and the gradual filling up of the bed that ensues is not to be treated as an accretion to the shores, but as an ultimate effect of the avulsion. The emergence of the land, however, may or may not follow, and it ought not in reason to have any controlling effect upon the location of the boundary line in the old channel."

From the foregoing, it is evident that the gist of this case, insofar as conditions existing subsequent to the year 1882 are concerned, is whether or not Tullos Island or Island 98, entirely disappeared.

Complainant in their original brief at page 89 thereof attempt to show that Island 98, or Tullos Island, did entirely disappear. As proof of this statement, the court is cited to Mississippi River Commission Chart 45, Survey of 1882 (Complainant's Exhibit "M"); sheet 17 of the Mississippi River Commission Survey of 1882, with the shore lines of 1894 drawn thereon in red (Complainant's Exhibit "C"), and the testimony of the witnesses, E. T. Purnell, Captain Joseph V. De La Hunt, Captain Charles H. West, Captain George Prince, Captain W. H. Reed, Ernest Newman, George R. Newman and William Miller. These references made by counsel to the proof in the case will here be discussed in the order presented by them.

Complainant's Exhibit "M," Mississippi River Commission Chart 45, Survey of 1882, shows that Tullos Island, or Island 98, was in existence at that time. This chart also shows another island located to the northwest of Island 98, and not named on the chart. Captain Marshall, in his testimony, refers to these two islands as upper and lower Tullos Islands. R. p. 171, 175. There is no dispute but that both of these islands were Mississippi territory at the time the chart was made in 1882. This is shown most clearly by complainant's exhibit "M" where on Chart 45, complainant's witness West has superimposed the Mississippi 1823 and the Louisiana 1824 governmental surveys.

This exhibit shows that the greater part of both upper Tullos Island and lower Tullos Island, or Island 98, as shown on the 1882 chart was a part of original Tullos Island as surveyed in 1823. It is of importance that these facts be kept clearly in mind, because of the confusion which otherwise would come about due to certain witnesses referring to upper Tullos Island by the name of Hopkins Island.

Counsel for complainant first refer to the testimony of E. T. Purnell, R. p. 264, 265, 271, 283 and 286. The gist of this testimony is merely that in 1893, '94 or '95, Island 98, or lower Tullos Island disappeared. Even though this testimony was undisputed and conceded to be true, yet unless the complainants have also shown that upper Tullos Island washed away, then their case must fail. That this island did not wash away is conclusively shown by the testimony of this very same witness. He refers to upper Tullos Island by the name of Hopkins Island. In order, however, to clearly determine what the witness meant by "Hopkins Island," counsel for defendant referred him to complainant's Exhibit "H" which showed the position of Hopkins Island as surveyed by Louisiana in 1869 and 1870, superimposed in dotted lines on blue print of the 1882 survey. (The Hopkins Island surveyed by Louisiana in 1869 had entirely disappeared and was in the bed of the river when the 1882 River Commission Chart was made. See testimony of Charles H. West, R. p. 140.) The witness when shown the blue print pointed out upper Tullos Island, marked on the blue print "high bar," as being what he knew as Hopkins Island, R. p. 277.

The testimony of this witness shows that upper Tullos Island, known to him as "Hopkins Island," never washed away. R. p. 275. This witness also testified that the channel of the river changed about Hopkins Island. R. p. 276.

N. B.: This witness's testimony is very significant and when analyzed goes far toward establishing the theory and proving the case of the defendant. The only point of difference between his testimony and that of witnesses for defendant is that this witness testified that lower Tullos Island completely washed away, while defendant's witnesses show that neither upper nor lower Tullos Island was destroyed. Even taking his testimony as true, it has only been shown that lower Tullos Island washed away, but that the channel of the river changed around upper Tullos Island, which did not wash away. If such be the true facts, then the theory of defendant has been established.

The next witness referred to by counsel in their original brief is Joseph V. De La Hunt. R. p. 292, 293, 294, and 295. The testimony of this witness, as the court will see, more firmly establishes and proves the defendant's theory than did that of the preceding witness.

Captain De La Hunt testified that Island 98, or Lower Tullos Island, completely disappeared. His testimony is equally as positive that upper Tullos Island, or Hopkins Island, or Hopkins Tow Head, as known to him, never disappeared. R. p. 298. His testimony is also to the effect that there was no channel to the west of Hopkins Island, or Hopkins Tow Head.

N. B.: This testimony carries to its logical conclusion that of complainant's witness, Purnell, who stated that the channel changed about Hopkins Island. This witness (De La Hunt) shows that the old channel west of Hopkins Island had filled up. It also bears out and supports the testimony of Captain Marshall to the effect that the channel of the river cut around to the north and east of upper Tullos Island, abandoning its old channel to the west of upper Tullos Island, which filled up so that the island became connected to the Louisiana shore.

The complainant's witnesses, Captain George Prince, R. p. 25, 26, 33 and 34; Captain W. H. Reed, R. p. 110, 120, 121, 122 and 128; Ernest Newman, R. p. 54, 55, 57, 58 and 63, and George R. Newman, R. p. 73 and 74, knew nothing about Island 98, it being undisputed that at the time to which their testimony was directed, i. e., subsequent to 1894, there was not an island in the main channel of the Mississippi River at the point in question; it having been attempted by complainant to show that prior to that time, Island 98 had disappeared, and by the defendant that the channel had gone around the islands to the north and east and they had become connected to the Louisiana shore by the old filled-up river bed. For this reason, their testimony concerning the existence or non-existence of the island and whether or not it disappeared is worthless except insofar as it related to the physical facts existing on the tow head, or island, at the time of their observation. All of these witnesses are familiar with the depression running between Willow Point and the island at that time. R. pp. 39, 63, 69, 107, 108.

The witness Reed was also familiar with the place on the island, or towhead, where there is a high bank with cottonwoods growing on the top and a new deposit of soil at the bottom of the bank with willows on it. R. pp. 124 and 125.

N. B.: Captain Marshall's testimony shows that the depression referred to by these witnesses was the old filled-up 1882 river channel. R. pp. 172, 173, 178; and the defendant's witness, Albritton, shows that the high bank with a new deposit at the bottom referred to by complainant's witness, Reed, was the west bank of the old 1823 island chute. R. p. 38.

Counsel for complainant next refer to the witness William Miller as testifying to the fact that Tullos Island completely disappeared. This witness not only failed to testify that the island disappeared, but he testified positively that it did not disappear, but that it was there in 1916 and was there "this Sunday. I saw it Monday. I pass it once or twice a week." R. p. 304.

The only other witness referred to by counsel in their brief as testifying that the island washed away is Captain Charles H. West. This witness was evidently the star witness on whom complainant pinned its hopes and faith, and references are made to his testimony reverently, and the facts testified to by him are referred to as proven, because "*ipse dixit.*"

This witness testifies that Island 98 completely washed away and disappeared, and that Willow Point by accretion

built over the location which formerly had been occupied by the island. R. p. 143 and 144. He bases this testimony upon two maps, one Chart No. 45 of the Mississippi River Commission Survey of 1882 (Complainant's Exhibit "M") and Sheet 17 of the Mississippi River Commission, which is a small scale map of the 1882 survey with the shore line of the 1894 survey superimposed thereon in red lines. (Complainant's Exhibit "C.") The gist of this testimony merely is that because the shore line of 1894 was east of the shore line in 1882, it necessarily had moved to its 1894 location as a result of accretion.

This witness was unaware of the fact that the 1894 survey contained the same character of detail and was similar in all respects in its preparation to Chart 45, Mississippi River Commission Survey of 1882. This fact possibly accounts for his using the small scale Sheet 17 rather than the original field or work sheets of the 1894 survey in giving his opinion testimony regarding the change in the channel of the river. It is inconceivable that had the witness had the benefit of the work or field sheets of the 1894 survey showing all details of elevation and contours that he would have fallen into the glaring error that he did.

Counsel for complainant, either by blindly following Captain West's testimony with reference to the non-existence of the detailed survey of 1894, or by failing to examine Defendant's Exhibits, 4-A-B-C, or if having examined them by making only a superficial examination of the same, have fallen into the same error as Captain West. Their brief is replete with statements as to the ignorance of Cap-

tain Marshall in assuming that there was a detailed topographical survey in 1894. Captain West in his testimony says:

> "The survey of 1894 did not take in the topography. It only took in the change in the position of the river alone, and that survey was printed on the Charts of the 1882 survey." R. p. 151.

On being asked about the original field or work sheets, the witness West again denies the existence of a detailed survey in 1894 and states that if these sheets were obtained only the shore line would be shown thereon. R. pp. 157, 158.

Counsel in their original brief at page 49, in referring to this testimony of the witness West, say the following:

> "Comment: This shows there was no topographical survey between 1882 and 1913."

On page 58 of the brief counsel in referring to the testimony of Captain Marshall explaining what Exhibits 4-A-B-C, blue prints of the original work sheets of River Commission Survey of 1894 show, said:

> "This testimony is without foundation. The survey of the Mississippi River Commission need only be examined to show its fallacy."

Again at page 61 of the brief counsel say:

> "The witness was evidently ignorant of what the survey of 1894 showed, and had assumed that the survey of 1894, like the survey of 1882, showed the topography and elevation, when it did nothing

of the kind, but showed only the changes in the position of the river alone."

Again at page 66 of the brief counsel say:

"Comment: The error of the witness in this regard has heretofore been explained. He evidently did not know that no new chart was made from the survey of 1894, but that this survey was superimposed on the chart of 1882. (R. p. 149, 151, 152.)

"All the testimony of Mr. Marshall showing topographical elevations, etc., in 1894 is based on the error which arose from his using the chart of the survey of 1882."

On page 67 of the brief, counsel say:

"Certainly these deductions of Captain Marshall, based on the errors of fact and ignorance of what the survey of 1894 shows can not overthrow the testimony of eye-witnesses to the fact that Island 98 entirely disappeared, especially when such testimony is shown to be true by the survey of the Mississippi River Commission of 1894."

On page 97 of complainant's brief, counsel say:

"Captain H. M. Marshall was evidently partly in error in assuming that the chart of the survey of the Mississippi River Commission in 1894 showed the topography and elevations of said year, when as a fact, the contour lines on said chart were of land that existed in 1882 and had largely disappeared in 1894."

Since the testimony of Captain West and of Captain Marshall is so directly antagonistic, and since the testimony

of each of them is so important for the determination of the deciding factor in this case, that is,, whether or not Tullos Island completely washed away, it becomes of the utmost importance that it be determined which of the witnesses is correct with reference to their statements concerning the Mississippi River Commission Survey of 1894. If Captain West's testimony that there was not a detailed topographical survey of 1894 be correct, then his testimony to the effect that the change in the channel was the result of erosion on the Mississippi shore and accretion to the Louisiana shore is of value because there would be nothing shown thereon insofar as elevations, depressions and contours of the land are concerned to contradict it. On the other hand, if Captain Marshall's testimony that there was a detailed topographical survey in 1894 be correct, then the testimony of Captain West is entirely worthless because of the fact that he has utterly disregarded those things which are most important in giving weight and worth to the testimony of an expert witness whose testimony is based entirely upon maps.

To show that Captain West was in error and that counsel for defendant have blindly followed him in it, it is here considered only necessary to refer the court to an examination of complainant's Exhibits 4-A-B-C, which are blue prints of the original field survey or work sheets of the Mississippi River Commission Survey of 1894, certified to by the Secretary or War as being true and correct.

Captain West's testimony shows that field notes and work sheets of the 1894 Survey were on file in the office of

the secretary of the Mississippi River Commission in St. Louis, R. p. 157 and 158, and Captain Marshall's testimony shows that Exhibits 4-A-B-C to his testimony are blue prints of the original field sheets of the 1894 Survey. R. p. 171. The field sheets themselves, as indicated by sheet number 5½, show the following character of detail:

"Mississippi River Commission,

Office of Secretary.

Low water survey of Mississippi River.

Arkansas River to Vicksburg.

Shore lines, bars and hydrography as shown by survey made from October 20 to December 15, 1894.

W. G. Comber, Chief of party.

E. L. Armand, O. N. Axtell, Topographers, Book No. 2903, Book No. 2906-2909.

T. C. Hockridge, E. D. Jones, Hydrographers, Book No. 2889.

C. A. Bonfils, Leveler. (Book No. 2899.)

Gustav Bichoff, Draftsman.

Field Sheet No. 5½—Vicinity of Duvall's, L. D. G. Landing.

Scale, 1:10,000."

If these notations on the field sheets were not of themselves sufficient to show that the character of detail covered by the map was not only shore lines, but the topography of

the land the hydrography of the river, certainly it is necessary to do no more than to examine the field sheets themselevs to show that all of these details are covered by the work. The three sheets show the channel of the river around to the east and north of the location of upper and lower Tullos Island in 1894. Soundings in the river are shown, to the south and west of the river is shown the land, and its topography is indicated by contour lines, elevations and notations as to the character of the soil, such as mud and sand, and the character of timber of growth shown thereon, such as grass, weeds, willows and cottonwoods. With these exhibits in evidence it certainly would be treating the survey of the Commission with scant regard to say that these field sheets do not show a detailed topographical history of the territory in question.

We think that it is proven beyond question that the 1894 Survey shows the same character of detail and gives the same data that the 1882 Survey gives, and that both Captain West, witness for, and counsel for the complainant, who blindly followed his testimony, are mistaken when they say that there was no Survey in 1894 of the same character as the Survey of 1882. If this be true, then it is evident that the testimnoy of Captain West is entitled to little or no weight because he utterly disregarded the essential factors which should have controlled his opinion.

Defendant's witnesses, William Miller, R. p. 304, Lawrence Townes, R. p. 220 and 231, and R. E. Foster, R. p. 209, show that neither upper nor lower Tullos Island completely washed away.

The testimony is undisputed that in the year 1893 both islands were in existence and that there were trees growing on them. (Testimony of Purnell, R. p. 264, 282, De La Hunt, R. p. 292, Miller, R. p. 304, Townes, R. p. 221 and 222, Foster, R. pp. 209 and 210, Marshall, R. p. 175.)

The testimony of the complainant's witness, E. T. Purnell, shows that the channel of the river changed around Hopkins Island (upper Tullos Island as shown by his testimony, R. p. 277), and the testimony of the complainant's witness, De La Hunt, shows that the channel of the river had come to the north and east of this island; and that the channel was in that location, and the island (upper Tullos Island) was there in 1908. R. pp. 292 and 298. All of the witnesses who were familiar with the physical facts existing on the territory in dispute after the year 1894 are agreed that there was a depression between Willow Point and what was variously designated by them as Island 98, or Newman's Towhead, and the testimony of Captain Marshall that this depression was in the same location as the river channel in 1882 is undisputed.

The testimony of defendant's witness, Albrittain, shows that in 1924 he went upon the Towhead (islands) with a surveyor and found high ground in the same location as that of the islands in 1882. The soil on this high ground was of the same character as the soil on the mainland and large cottonwood trees, the largest on the towhead, grew there. This high ground extended to the river on the west, and was bounded on the east by a steep bank, shown to be in the location of the west bank of the 1823 island chute.

To the east of this high ground was made land with soil of a different kind and covered with a different growth—willows. R. pp. 243, 244, 252.

Complainant's witness, W. H. Reed, corroborates this testimony, showing that he was familiar with the high bank, the varying character of soil deposits, and growth thereon at this particular point. R. pp. 124, 125.

N. B.: This testimony shows that the island could not have washed away. On the contrary, it is evidence of the fact that the channel of the river had gone around this high ground (islands) making a new channel to the east and from there gradually moved eastward by erosion of the main Mississippi shore, the islands being gradually added to and enlarged by accretion.

The testimony of Captain Marshall, giving his interpretation of the history of the change in the river from 1882 to 1894 based on the 1894 field and work sheets and the map of the Mississippi River Levee District, showing changes in the channel of the river from 1882 to 1896, should be considered with special reference to the above testimony because of the fact that his interpretation of the maps is borne out practically in every detail by the testimony of these witnesses. It should also be borne in mind, in examining the testimony of this witness that his opinions are not unsupported by facts, but each statement by him is based on data obtained from the charts to which he referred, or is based on personal knowledge of the situation. As has been stated before, a most important thing to be kept in mind in considering the testimony of this witness

is, that there is no dispute of the fact that both upper and lower Tullos Island were in existence as late as 1893.

Captain Marshall, using as a basis for his testimony Exhibits 4-A-B and C, first shows that at the time the Survey was made in 1894 there was high ground in the same location as Tullos Island in 1882 and of a slightly higher elevation than were the Islands at that time (1882). To the west of the location of this high ground there is shown low ground, this low ground being 20 feet lower than the high ground, and some 25 feet above the water level. R. p. 172-173. The witness next shows by superimposing over the 1882 Survey a tracing of the 1894 Survey that the high ground referred to was in the identical location as the Islands in 1882, and that the low ground was in the identical location of the river in 1882. R. p. 178. He next shows that there was timber, cottonwoods and willows, growing on this high ground. R. p. 173-174. The witness next, by comparison of Chart 45 of the 1882 Survey and Chart 47 of the 1913 Survey, shows that the river in 1913 had returned to the same location as occupied by it in 1882.

It will, therefore, be seen that this witness has shown the following facts:

1. That in 1894 there was high ground practically of the same elevation and in the same location as the Islands in 1882.

2. That the channel of the river was to the east of this high ground, and over the location of the old 1823 Island chute.

3. That to the west of this high ground there was low ground in the identical location of the channel of the river in 1882.

4. That there were cottonwoods and willow trees growing on this high ground at the time of the Survey in 1894.

5. That the channel of the river in 1913 was in the same location as in 1882.

These facts are not and cannot be disputed because they are shown positively by the official maps and charts introduced as exhibits in the case. With these facts as a basis the witness then gives it as his expert opinion that the channel of the river changed so as to cut around to the north and east of upper and lower Tullos Island and made a new channel there by widening and straddling the old 1823 Island chute. With these facts established it would not take an expert to reach the conclusion given by Captain Marshall, the facts themselves being so plain and convincing that the humblest citizen could reach no conclusion other than that given by the witness. It will be recalled that the testimony is undisputed that the islands were in existence in 1893, and yet one year later by the Survey of 1894—it is shown that there were then cottonwood and willow trees growing on the high ground. (The Islands.) It is inconceivable that if the island had completely washed away, as contended by complainant, the towhead could have built back in that one year and have had growing upon it cottonwood and willow timber. The analysis of the undisputed facts reduces the contention of complainant to an absurdity.

Captain Marshall further substantiates his testimony in this regard by explaining the facts shown by the Mississippi River Levee District map of Albemarle Bend which was prepared by Captain C. H. West in 1908, but introduced as an exhibit to the defendant's testimony. The progressive building of the levees as disclosed by this map shows how the caving by the river, which was confined to the lower part of lower Tullos Island in 1882 had, by 1888, shifted above and behind or to the north and east of Tullos Island, and from there gradually widened out the chute to the east of Tullos Island. R. pp. 180-181.

The inescapable and incontrovertible fact is that the engineers of the Mississippi River Commission in 1894 found the islands in their old position with timber growing thereon and delineated them on their field or work sheets, and on the same survey and work or field sheets showed the river had passed around them to the north and east.

The fact is also inescapable that all of the maps or charts introduced in evidence save only the blue prints made by Captain West and offered as Exhibits to his testimony show the islands. As was well explained by Captain Marshall:

> "Q. Does any other map or drawing which you have seen, except this map, or No. 3 of C. H. West, lose sight of the island?
>
> A. No, I have not seen any of the maps except the Mississippi River Commission maps which have been under discussion, the 1 to 10,000, 4-A-B- and C, the one inch to the mile, 17, Exhibit 3, those are the only maps that I know of, except the one

issued with the superimposed lines on Sheet 17 showing the 1894 line, from which, I presume, Captain West prepared his Exhibit I. None of those shown was accretion, and none of them have the island left off."

In this connection the fact must not be lost sight of that during this entire period of time the territory comprising the islands was assessed for taxation by Issaquena County in accordance with the laws of the State of Mississippi (as will be more fully discussed under the next subdivision of this brief) by the owners thereof giving in the same under oath to the assessor with the value thereof fixed by them; that the acreage, valuation, and ownership of these lands varied during the years; that taxes thereon were paid to the State of Mississippi, or in default thereof the lands were sold by the State. These facts show not only that the State of Mississippi exercised acts of sovereignty, dominion and control over the territory but also that it was actually in existence during this period of time.

It is, therefore, respectfully insisted that the testimony of the witnesses and the proof furnished by the maps and other exhibits in this cause show conclusively that Tullos Island did not wash away, but that the channel of the river changed about it, so as to cut around to its north and east side, leaving the old river bed to fill up and connect the island with the Louisiana shore.

EXCEPTION B TO MASTER'S REPORT

Exception "B" is as follows: That the accretions which attached to the Louisiana shore up to the avulsion of

1912-13 and thereafter, so long as the current continued to flow in the channel as it existed prior to said avulsion became Louisiana territory." As this exception must stand or fall with exception "A," it becomes unnecessary to discuss the evidence in connection therewith.

Exception "C" is: "That Mississippi did not by possession or the exercise of sovereignty over the disputed territory acquire any right or title thereto."

The soundness of this exception depends upon the evidentiary value of defendant's exhibit "A"-"N" inclusive and "V-2" which is a map of East Carroll Parish, Louisiana, prepared under authority of the governing body of that parish.

EVIDENTIARY VALUE OF EXHIBITS.

Counsel for complainant do not undertake nor attempt to show that the State of Mississippi was not, during this period of time, exercising acts of dominion and sovereignty over this territory, by assessing it for taxation, selling it for the non-payment of taxes, etc., but are constrained to treat these facts lightly and as being of little value. In speaking of these assessments counsel in their brief at page 98 say:

> "The assessors in making these assessments do not survey the land, but merely go to the deed records and year after year assess the same property over again many times, long after the property has washed away.
>
> Such assessments prove only rem ipsam, that is, that they made such assessment."

This statement by counsel in their brief is unwarranted, and is unsupported, either by law or by the facts in the case.

Sections 489, 490, 491, 492 and 495, Mississippi Code of 1880, provided the method for the assessment of lands in the State of Mississippi during this period of time. These sections provided that: "Lands shall be assessed once in every four years according to the intrinsic value to be judged of by the owner or person having possession or charge thereof on oath, etc."

Sections 490, 491, 492 and 495 provide how the land rolls are made up and how the lands are described thereon and assessed. These sections show that the duty is strictly imposed upon the assessor to see that all the land in his county appears on the assessment roll, and that such lands are properly assessed for taxation.

Section 505 imposes the duty on the board of supervisors of examining the assessment roll for the purpose of ascertaining that it embraces all of the land in the county and correctly represents its ownership.

Section 507 provides:

> "In case of the destruction or deterioration in value of any real estate by any casualty, etc. * * * * the board of supervisors shall have power * * * * to change the assessment so as to reduce or increase it to the true value of the property, etc."

N. B.: For full text of these Code sections see appendix.

So it is seen that instead of the assessment being made in the haphazard manner suggested by counsel in their brief, the roll is very carefully made up by the owner of the property giving the same, under oath, to the assessor. The duty is also imposed on the board of supervisors to carefully examine the roll to see that the same embraces all the property in the county subject to taxation, and the power is given to them, in case it is shown that any property on the rolls has been destroyed, to strike the same therefrom, or to rēduce its value in accordance with the true facts.

There being no proof that the provisions of the law in this regard were not followed, it must be presumed that the officers of Issaquena County in the performance of their official duties performed them in the manner required by the law.

With reference to the map of East Carroll Parish, introduced by the defendant, counsel say the following in their original brief at page 99:

> "The map of East Carroll Parish, introduced by defendant, prepared by a Mr. Montgomery, not made from any survey at the time of its execution, but evidently made from the land survey of the United States Government of 1824, cannot show what accretions or erosions occurred since then, and is without any value as evidence when it is direct contradiction of the charts of the Mississippi River Commission, made from actual sur-

veys, at the time, and oral testimony of eye-witnesses."

It is evident from this statement that counsel have entirely misconceived the object and the purpose for which defendant introduced this map. The purpose of introducing it was not to show that the surveys of the Mississippi River Commission in 1882 and 1894 were incorrect, but only for the purpose of showing what territory East Carroll Parish, Louisiana, claimed as its own and over which it was exercising acts of sovereignty, dominion and control.

This map as certified and authenticated pursuant to the agreement entered into by counsel, as disclosed by the record at page 319, shows it to have been made by direction of the board of police of East Carroll Parish. The record, therefore, shows that not only did East Carroll Parish fail to exercise acts of sovereignty, dominion or control over the territory here in dispute, by failing to assess the same for taxation, but by the adoption of this map as the official map of the parish, has recognized that it has no right to such lands.

The defendant takes the position that these facts should have great weight with the Court in determining the merits of this controversy.

The rule is well settled that where the question is one of boundary between two states of the Union, long acquiescence in the location of a particular boundary and the exercise of dominion and sovereignty over the territory within it is conclusive as between the states.

Rhode Island vs. Massachusetts, 4 Howard 591, 11 L. Ed. 1116,

Missouri vs. Kentucky, 11 Wallace, 395, 20 L. Ed. 1116,

Indiana vs. Kentucky, 136 U. S. 479, 34 L. Ed. 329, 10 Sup. St. Rep. 1051,

Virgina vs. Tennessee, 148 U. S. 503, 37 L. Ed. 537, 13 Sup. Ct. Rep. 728,

Maryland vs. West Virginia, 217 U. S. 1, 54 L. Ed. 645,

Arkansas vs. Tennessee, 246 U. S. 158, 62 L. Ed. 638,

Michigan vs. Wisconsin, 270 U. S. 295, 70 L. Ed. 595,

Oklahoma vs. Texas, 260 U. S. 606, 67 L. Ed. 428,

Oklahoma vs. Texas, 272 U. S. 19, 71 L. Ed. 145,

Franzeni vs. Layland, 120 Wisconsin 72, 97 N. W. 499.

In the case of *Indiana vs. Kentucky*, supra, the court said:

> "This long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potential than the recollections of all the witnesses produced on either side. Such acquiescence in the assertion of authority by the State of Kentucky, such omission to take any steps to assert her present claim by the State of Indiana, can only be regarded as a recognition of the right of Kentucky too plain to be overcome, except by the clearest and most unquestioned proof. It is a principle of public law universally recognized, that long acquiescence in the posses-

sion of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and right."

In the case of *Virginia vs. Tennessee*, supra, the court said:

> "As said by this court in the recent case of *Indiana vs. Kentucky*, 136 U. S. 479, 516 (34: 329, 335), it is a principle of public law, universally recognized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority. In the case of *Rhode Island vs. Massachusetts*, 45 U. S. 4, How. 591, 539 (12: 1116, 1139) this court, speaking of the long possession of Massachusetts, and the delays in alleging any mistake in the actions of the commissioners of the colonies, said: 'Surely this, connected with the lapse of time, must remove all doubts as to the right of the respondent under the agreements of 1711 and 1718. No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade with the lapse of time and fall with the lives of individuals. For the security of rights, whether of states or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be invoked with greater justice and propriety than in the case of disputed boundary."

In the case of *Louisiana vs. Mississippi*, 202 U. S. 1, 50 L. Ed. p. 932 and 934, the court said:

"The record contains much evidence of the exercise by Louisiana of jurisdiction over the territory in dispute, and of the general recognition of it by Mississippi as belonging to Louisiana. Apparently Louisiana had exercised complete dominion over it from 1812 with the acquiescence of Mississippi, unless the fact that the latter made a general reference to islands within 6 leagues of her shore in her Code of 1880 indicated otherwise. But the evidence fails to satisfy us that she attempted any physical possession or control until after 1900. The few instances referred to as showing that Mississippi asserted rights in the disputed area are of little weight and require no discussion."

In the case of *Maryland vs. West Virginia*, supra, the court said:

"It is true that there has been more or less contention as to the true boundary line between these states. Attempts have been made to settle and adjust the same, some of which we have referred to, and the details of which may be found in the very interesting document to which we have already made reference, the report of the committee of the Maryland Historical Society."

* * * * * *

"Independently of any effect due to the compact as such, a boundary line between states or provinces, as between private persons, which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original

grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary."

In the case of *Franzeni vs. Layland*, 120 Wisconsin, 72, the court said:

"The undisputed evidence that for over fifty years, for all governmental and other purposes, the territory between Coon Slough and the Mississippi River proper has been considered by this state, the general government, and the State of Minnesota as well, as east of the boundary line between the two states, would be conclusive evidence, at least in a suit between private parties, of its proper location. Acquiescence for a long period of time is evidentiary of the right involved between sovereignties as well as between individuals."

In the case of *Oklahoma vs. Texas*, 260 U. S. 606, 67 L. Ed. 428, the court said:

"Texas has been exercising jurisdiction over the area and asserting proprietorship of the soil for more than half a century, and has surveyed and disposed of it all, the earliest disposals being in 1856. Some of the later surveys seem to conflict with those first made, but all name the river bank as a boundary. In those of 1856, and possibly others, it was the controlling call. See *Schnackenberg vs. State*, Tex. Civ. App. 229 P. 934; *Cordell Petroleum Co. vs. Michna*, 276 Fed. 483. The jurisdiction and title of Texas stood unchallenged until shortly before this suit. Our conclusion is that the claim that the river, or any part of it, ran south of this area in 1821, is not sus-

tained. So the boundary follows the cut bank around the northerly limit of the area."

The defendant does not in this case take the position that these acts of dominion and sovereignty, exercised over the territory in question, by assessing the same for taxation, selling it for non-payment of taxes, and dealing with it as its own, is alone sufficient to establish its title to the lands in controversy, even though such acts of sovereignty are coupled with acquiescence therein by the State of Louisiana. The State of Mississippi, however, does take the position that these acts of dominion and sovereignty should be given great weight and are strong evidence of the rights of the parties with reference thereto.

EXCEPTION "D" is: "That at the time o fthe filing of the report of the Special Master the true boundary line between the States of Louisiana and Mississippi is the middle of the navigable channel of the Mississippi River, as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion of 1912-1913."

The soundness of this exception must be determined by the soundness or unsoundness of the preceding exceptions, and therefore we do not discuss it.

IV.

CONCLUSION.

The State of Mississippi, therefore, respectfully contends that the State of Louisiana has failed, first, to prove that the change of the Mississippi River from its 1823 to

its 1882 channel was the result of accretion. If this be true, then the case of the State of Louisiana must fail, not only as to the territory now embraced in what is known as Newman's Tow Head, but also as to that territory now on the Louisiana mainland and lying between the present channel of the river and the thread of the stream of the river in 1823.

But if the court takes the position that the State of Louisiana has shown this change to be by accretion, the defendant State of Mississippi still contends that the complainant has not shown the change in the river from its 1882 to its 1894 channel to be a result of erosion of and washing away of Tullos Island and the extension of the Louisiana shore line by accretion; but that the proof establishes the fact that such change was occasioned by the river eating into the Mississippi mainland, north and east of Tullos Islands and thereby passing around them, and upon filling of the old channel leaving the former island intact but connected to the Louisiana shore. If the State of Louisiana has failed to establish this fact, then what is now shown on the maps and designated as Newman's Tow Head should be adjudged by decree of this court to be Mississippi territory and the boundary between the States of Louisiana and Mississippi at the point in question fixed as the middle of the channel of the Mississippi River as it flowed in the year 1882.

Respectfully submitted,

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Attorney General of Mississippi

PAT HENRY,
RUFUS CREEKMORE,
ELMER C. SHARP,
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RUSH H. KNOX,
Solicitors for State of Mississippi.

APPENDIX.

MISSISSIPPI CODE OF 1880

Assessment of Lands

Sec. 489: Lands shall be assessed once in every four years, according to intrinsic value, to be judged of by the owner or person having posession or charge thereof, on oath, taking into consideration the improvement, also the proximity to navigation, or to any town, city, village, or road, and any other circumstance that may tend to enhance the value, and not at what it might bring at a forced sale, but what the owner would be willing to accept and expect to get for it, if he was disposed to sell it; and if any person shall deliver or disclose to any assessor or deputy assessor, any list, statement or return, in regard to his land, which, in the opinion of the assessor or deputy assessor, is false or fraudulent, or contains any understatement or under-valuation, it shall be lawful for the assessor or deputy assessor to make an assessment of said land, at a valuation equal to the highest rate per acre, for any lands adjoining said land so under-valued, which may have been returned under oath. Land not given in by any person, shall be valued in the same manner by the assessor; and should there be a difference in the value of different parcels of a tract, the

several parcels of such different values shall be separately asssed; *provided*, that the first assessment, under this law, shall be made in the year 1883, and until that shall have been made, the assessment in the year 1879, shall continue in force, and be the basis of taxation and collection.

How Land Roll Made Up.

Sec. 490: Each assessor shall keep the land assessment roll separately, and he shall commence the same in the lowest number of range and township in his county, and in the northeast corner of each township, and shall proceed, numerically, with all the sections, townships, and ranges in his county, first setting down all the subdivisions of each section, as they belong to different individuals, or the whole section together, if owned by one person and not divided on account of parcels being of different value; and if more than one person shall claim to be the owner of the same tract or parcel of land, the assessor shall so state in his assessment roll, and shall only be entitled to the value of one assessment, and the tax collector shall only collect the taxes on one assessment; land of the United States, or land exempt from taxation, shall be set down in separate columns, without the value. Lands not surveyed according to the plan of the government surveys, shall be set down by the designation used on the government maps, or by other means, by which they may be distinguished; and if parts of such lands shall be owned by different persons, such part shall be referred to by quantity, and such short memorandum as may be convenient to show the locality. In assessing land situated in any city or town, the assessor shall proceed according to

the plat or plan thereof, commencing with the lowest number of square and lot, or other subdivision, and proceeding numerically, with all the lots in a square, and all the squares in square and lot, or other subdivision, and proceeding numerthe city or town, until completed; but no failure to observe any of the requirements shall be held to vitiate any assessment, if the land be so described as to be identified; and it shall be a sufficient identification of land to describe it as "the land of ..... (the person owning or claiming it), occupied by....," or that part of (section or other known division, designating it) owned or claimed by .....;" or "the lot on which resides" or "the lot occupied by..... .....;" or "by the name of which it may be known, or by any description, which will furnish a sure guide for the ascertainment by parcel evidence of the particular land intended.

DESCRIPTION OF LAND.

Sec. 491: In assessing land, a description of it as a part of a designated tract or division, shall be held to embrace such part as is the subject of separate ownership as one tract or division whether owned by one or several jointly; and when part of a designated tract or division shall be sold for taxes; the sale shall pass the title of such part as was the subject of such separate ownership when it was assessed; and the sale of a specified number of acres of a tract containing more or a specified portion of a tract shall pass an undivided interest in the whole tract equal to the proportion which the number of acres or portion sold, bears to the whole tract; and when part of a known tract or divi-

sion of land is assessed by a description which identifies it, any other part of it which is assessed, but not so identified, shall be held to embrace all of such tract or division not included in the part identified; and parol testimony shall always be admissible to apply a description of land on the assessment roll, or in a conveyance for taxes, where such testimony will show what land was assessed and sold, and there is enough in the description on the roll or conveyance to be applied to a particular tract of land by the aid of such testimony.

WHAT CARRIED FORWARD TO LAST PAGE.

Sec. 495: To facilitate the assessment and collection of taxes, the board of supervisors of each county shall procure, if not already done, and keep a land book, or book of maps of all the townships and fractional townships in the county, which book shall be well bound, and shall be deposited in the office of the clerk of the board of supervisors; and shall procure lists of lands in their counties owned by the United States, and no allowance shall be made to the assessor, who does not show upon his assessment roll an assessment of every acre of land in his county, as shown by the map or townships in his county, if there be such; and it shall be the duty of the board of supervisors to carefully compare the assessment roll with the said maps, with a view to the enforcement of this provision.

ROLL TO EMBRACE AND CORRECTLY DESCRIBE ALL LANDS.

Sec. 505: It shall be the duty of the board of supervisors to carefully examine the assessment roll of lands before

approving it, to see that it embraces all of the land in the county, and correctly represents it as being the property of individuals, or the State, or United States, and taxable or not taxable, according to law, and that all land correctly described according to law, so as to be identified with certainty; and all land improperly omitted from such roll shall be added thereto by such board or under its direction, and land incorrectly or insufficienetly described shall be caused by such board to be properly described on said roll before it shall be approved; and the assessor shall at once make all corrections in the said assessment roll, which said board may direct, but the board may cause such corrections to be made by the clerk of such board.

CHANGE IN ASSESSMENT IN CERTAIN CASES.

Sec.507: In case of the destruction or deterioration in value of any real estate, by any casualty, or in case of clerical error in the assessment rolls, or in case of over-assessment, known to be such, or in case of a change of ownership, after assessment, or in case of an increase of value by the erection of improvements, the board of supervisors shall have power, at any time, on the application of a party interested, or otherwise, to change the assessment so as to reduce or increase it to the true value of the property, or to cause the taxes to be charged to the purchaser thereof; and in case of the reduction or increase of any assessment, the same shall be certified by the clerk of the board of supervisors to the auditor.

I hereby certify that I have this day mailed to Percy Saint, Attorney General of the State of Louisiana, New Orleans, Louisiana, postage prepaid, a true copy of this Brief; and have also mailed to John Dale, Vidalia, Louisiana and Brandon & Brandon, Natchez, Mississippi, Solicitors for the State of Louisiana, a true copy of this Brief.

This the 13th day of December, 1930.

GEORGE T. MITCHELL,
Attorney General.

By E. C. Thompson
Associate Counsel.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1932

No. 6, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI, DEFENDANT.

Statement of the work done, the time employed, and the expenses incurred by the Commissioner in the running, locating, platting, and marking the boundary between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the south.

SAMUEL S. GANNETT,
Commissioner.

WASHINGTON, D. C., *June 19, 1933.*

Supreme Court of the United States

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WASHINGTON, D. C., *June 19, 1933.*

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Complying with the instructions given in sec. 5 of the decree of April 13, 1931 (283 U. S. 793), your Commissioner begs to submit the following statement of the work done, the time employed, and the expenses incurred in running, locating, platting and marking upon the ground the boundary between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the south.

Expenses of Louisiana-Mississippi Boundary Line Commission During October, 1932.

Traveling expenses of Samuel S. Gannett, Commissioner, from Washington, D. C., to Vicksburg, Miss., Oct. 3, 4, 5	$59.97
Hotel expenses of Samuel S. Gannett at Vicksburg, Oct. 5 to 31, inclusive, including lodging, office rent, meals, local and long distance telephone calls, etc., 27 days at $4.25	114.75
Expressage on surveying instruments from Washington, D. C., to Vicksburg, Miss	9.26
For cash paid for traveling and miscellaneous expenses of E. L. McNair, Chief of Field Party, as follows: Washington, D. C., to Vicksburg, Miss. (including round trip ticket Washington-Vicksburg), October 10, 11, 12	85.05
E. L. McNair, lodging and subsistence, Vicksburg, Miss., October 12-31, 20 days at $3.40	68.00
Cash paid by Samuel S. Gannett, Commissioner, to members of Field Party, as follows:	
E. L. McNair, Chief of Party, Oct. 10-31, 22 days at $15.00	330.00
Leland Abel, use of truck, October 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, 13 days at $10.00	130.00
Gorman Schaffer, Chainman and use of auto part of time, October 6, 7, 12, 13, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31	70.50
Charles A. Smith, Rodman, October 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, 13 days at $3.00	39.00
E. H. Riles, Chainman, October 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 12 days at $3.00	36.00
Edwin B. Knox, Chainman, October 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, 13 days at $3.00	39.00
For cash paid for miscellaneous field expenses as follows: Schoellhorn-Albrecht Machine Co., St. Louis, Mo., 24 bronze state line and reference point tablets at $2.75	66.00
Express on same	2.65

O'Neil-McNamara Hardware Co., Vicksburg, Miss., axes, brush hooks, saws, etc	19.20
Miss. Lumber Co., Vicksburg, Miss., cement, sand, gravel for monuments	34.05
Vicksburg Boiler and Iron Works: Reinforcing rods	2.00
Adams; Drafting maps	7.50
October 18, 19, 20, Ferry of truck, Yazoo River	3.00
Oct. 20, Enterprise Plumbing and Metal Works: 7 metal forms for monuments	6.45
1 mixing box	4.50
Cash Paid: J. H. Cage, October 28, Hauling	3.00
Sam Crockett, labor, Oct. 27, 28, 29	3.00
Nathan Brown, labor, Oct. 27, 28, 29	3.00
Florence Cage, subsistence of 5 men of party, Oct. 27, 28	8.75
Total expenses for October	$1,144.63
½ payable by Louisiana	572.32
½ payable by Mississippi	572.32

Expenses of Louisiana-Mississippi Boundary Line Commission During November, 1932.

Leland Abel, for services and use of truck, Nov. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 11 days at $10.00	$110.00
Gorman Schaffer, chainman, Nov. 1, 2, 3, 4, 5, 5 days at $3.50	17.50
Gorman Schaffer, services of self with auto, Nov. 17, 1 day	8.50
Chas. A. Smith, rodman, Nov. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 10 days at $3.00	30.00
E. H. Riles, chainman, Nov. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 10 days at $3.00	30.00
Edwin B. Knox, chainman, Nov. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 10 days at $3.00	30.00

Nov. 2, Sam Crockett, laborer	2.00
Nov. 3 & 4, Nathan Brown, laborer, 2 days at $2.00	4.00
J. H. Cage, for hire of team, Nov. 1, 2, 3, 4, 4 days at $2.50	10.00
J. H. Cage, for services of self and team, Nov. 8	3.00
Nov. 3, Vicksburg Boiler Works, steel reinforcing rods	1.00
Mrs. Florence Cage, for subsistence of survey party, Nov. 1, 2, 3, 4, 5, 8, 6 days and nights	42.00
Nov. 7 to 12, James L. Adams, drafting map of boundary line	60.00
Nov. 1 to 12, Mississippi Lumber Co., for sand, gravel and cement	5.60
Nov. 12, Enterprise Plumbing and Metal Works, 2 forms	1.90
Nov. 9, 10, 11, Ferry charges on truck across Yazoo River	3.00
Nov. 22, Photostat of map	3.00
Nov. 1-23, Postage stamps $1.00, Rubber stamps $1.00	2.00
Services of stenographer and typist	4.00
Hotel expenses of Samuel S. Gannett at Vicksburg, Miss. (Nov. 1 to Nov. 15, inclusive, including lodging, office rent, meals, local and long distance telephone calls, telegrams, etc.), 15 days at $4.50 per day	67.50
Nov. 15, Expressage on surveying instruments, Vicksburg to Washington, D. C	9.81
Traveling expenses, Samuel S. Gannett, from Vicksburg, Miss., to Washington, D. C	57.50
Hotel expenses, E. L. McNair at Vicksburg, Nov. 1-17, inclusive, 17 days at $3.50	59.50
Traveling expenses, E. L. McNair from Vicksburg, Miss., to Washington, D. C. (R. R. fare not included)	13.90

E. L. McNair, pay Nov. 1 to 22, incl., 22 days at $15.00	330.00
Total expenses for November	$905.71
½ payable by Louisiana	$452.85
½ payable by Mississippi	452.85

Expenses of Louisiana-Mississippi Boundary Line Commission During March, 1933.

E. L. McNair, chief of party and expert computer, March 9 to 31, inclusive, 23 days at $15.00	$345.00
Mch. 9, U. S. Geological Survey, Drafting	3.61
Mch. 9, Postage stamps $1.00, Stationery $1.00	2.00
Mch. 9-31, Stenographer and typist	4.00
Mch. 29, Photostats of Maps	3.50
Total expenses for Mch., 1933	$358.11
½ payable by Louisiana	179.06
½ payable by Mississippi	179.06

Expenses of Louisiana-Mississippi Boundary Line Commission During April, May, and June, 1933.

U. S. Geological Survey, additional map work	$49.00
U. S. Geological Survey, photolithographing and printing 50 copies of map and diagrams of bronze tablets	207.66
Judd & Detweiler Inc., Washington, D. C., printing report of the Commissioner	93.00
Judd & Detweiler Inc., printing financial report of the Commissioner	26.00
A. Zichtl, Washington, D. C., binding three copies of the Report of the Commissioner, at $1.50 each	4.50

Stenographer and typewriters $30, Postage stamps $1.00	31.00
Total expenses for April, May, and June, 1933	$411.16
½ payable by Louisiana	205.58
½ payable by Mississippi	205.58
	$411.16

Total cash advanced by the Commissioner in payment of all field and office expenses incurred in running, locating, platting, and marking the Boundary Line between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward) on the south, is $2,819.62. Of this amount of $2,819.62, the State of Louisiana through the Chief State Engineer, New Orleans, has refunded to the Commissioner $1,409.81 and the State of Mississippi through the Attorney General, Jackson, Mississippi, has refunded to the Commissioner $1,409.81, subject to approval by the Court.

Personal Services of Samuel S. Gannett, Commissioner.

From Sept. 26 to Oct. 2, inclusive, 1932 ..... 7 days

Studying the several hundred pages of the printed record and various maps and exhibits of plaintiff and defendant, planning details of field work for the Boundary Commission.

From Oct. 3 to November 15, inclusive, 1932 ..... 44 days

Supervising field work of running, locating and marking the disputed Louisiana-Mississippi Boundary Line.

From November 16 to 19, inclusive, 1932	4 days	
March 7 to 31, inclusive, 1933	25 days	
April 1, 3, 5, 7, 8, 10, 12, 13, 14, 17, 19, 20, 21, 25, 29, 1933	15 days	
May 1, 4, 11, 16, 17, 29, 31, 1933	7 days	
June 2, 8	2 days	53 days
Making and directing final computations of field notes, supervising preparation of map and diagrams, arranging data, writing report of Louisiana-Mississippi Boundary Line Commission and compiling this financial statement.		
Total		104 days

Recapitulation.

Total cost of boundary work, described in report dated May 17, 1933, including cost of engraving the map, printing report of Commissioner, also compiling and printing this financial statement dated June 19, 1933, but not including compensation of the Commissioner, $2,819.62.

To the above amount must be added whatever is allowed the Commissioner as compensation for his services.

Respectfully submitted,

SAMUEL S. GANNETT,

Commissioner.

WASHINGTON, D. C., *June 19, 1933.*

IN THE

Supreme Court of the United States

OCTOBER TERM 1930.

NUMBER 8 ORIGINAL.
IN EQUITY.

THE STATE OF LOUISIANA, *Complainant,*

vs.

THE STATE OF MISSISSIPPI, *Defendant.*

PROPOSED FORM OF DECREE

This cause coming on for hearing by this Court upon the Report of Thomas G. Haight, Special Master appointed by this Court, and herein filed, and upon the Exceptions filed herein by the State of Mississippi, Defendant, to said Report of the Special Master, including the Findings of Fact, Conclusions of Law, and Recommendations for a Decree, and also upon all pleadings and exhibits thereto heretofore filed by both Complainant and Defendant, and also

upon all depositions of witnesses and documentary and record evidence adduced, preferred, filed, and submitted both by Complainant and Defendant and upon all Briefs of counsel both for Complainant and Defendant heretofore filed and submitted; and thereupon, on February 2nd, A. D. 1931, this Court having rendered an Opinion sustaining all the findings and recommendations of the Special Master, and directing that a Decree should be entered as recommended by the Special Master; and the Court being fully advised in the premises:

It is thereupon Considered, and now Ordered, Adjudged, and Decreed by this Court, as follows, to-wit:—

1. That the Bill of Complaint has been sustained by sufficient and legal evidence, and that Complainant, the State of Louisiana, is at law and in equity entitled to the relief prayed for;

2. That the Report of Thomas G. Haight, Special Master, be and the same is hereby approved, sustained, and confirmed by this Court, and that the Exceptions to said Report filed by the State of Mississippi, be and the same are hereby over-ruled;

3. That immediately prior to the avulsion of 1912-1913 the boundary line between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the North and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the South, was at the place and line which was the thread of the main channel of the Mississippi River as it then ran; and that, the current having

since ceased to flow in part of said channel as it existed prior to said avulsion, because of the new channel produced thereby, at this time the true boundary line between the State of Louisiana and the State of Mississippi, in that part and so much of the above area as was affected by the avulsion (between said North and South points), is the middle of the navigable channel of the Mississippi River as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion of 1912-1913.

4. That ..... and .... and ..... are hereby named and appointed as a Commission, with power, authority, and instructions to ascertain, survey, plat, and mark by suitable permanent boundary markers said boundary line, as above defined, between said States between said North and South points, and to make and file in this Court as soon as practicable a full and accurate report of their findings, survey, and plat, and that the same be submitted to this Court for confirmation; and that said line when ascertained and located in accordance with this decree and approved and confirmed by the Court, is the boundary line between the State of Louisiana and the State of Mississippi between the North and South points hereinabove mentioned.

5. That said three Commissioners be allowed each the sum of ..... Dollars per day for each day actually engaged in performing the work which they are above directed and appointed to perform, and such expenses in addition thereto as may be necessary in the performance of their duties.

6. That all costs incurred in this suit by both Complainant and Defendant to and including the date of the rendition of this Decree be and the same are hereby taxed and adjudged against the Defendant, State of Mississippi, and are ordered and decreed to be paid by the State of Mississippi; that the costs and expenses that may hereafter be incurred in the ascertaining, marking, surveying, and platting of the inter-state boundary line by the Commissioners in pursuance of this Decree be and the same are hereby ordered and decreed to be paid one-half by Complainant and one-half by Defendant.

The foregoing form of decree is respectfully submitted to the Court with the request that it be approved.

March 5, 1931.

PERCY SAINT,
Attorney General of Louisiana.
JOHN DALE,
GERARD BRANDON
ROBERT ASH,
Assistant Counsel for Louisiana.

February 28, 1931.

GEO. T. MITCHELL,
Attorney General of Mississippi.
By J. A. LAUDERDALE,
Assistant Attorney General of Mississippi.

FILE COPY

MAY 22 1
CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 6, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI, DEFENDANT.

REPORT OF COMMISSIONER APPOINTED TO RUN, LOCATE, PLAT, AND MARK THE BOUNDARY BETWEEN THE STATE OF LOUISIANA AND THE STATE OF MISSISSIPPI BETWEEN LATITUDE 32° 39′ ON THE NORTH AND THE DIVISION LINE BETWEEN ISSAQUENA AND WARREN COUNTIES, MISSISSIPPI (AS EXTENDED WESTWARD) ON THE SOUTH.

SAMUEL S. GANNETT,
Commissioner.

WASHINGTON, D. C., May 17, 1933.

PRESS OF JUDD & DETWEILER, INC., WASHINGTON, D. C.

Supreme Court of the United States

OCTOBER TERM, 1932

No. 6, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI, DEFENDANT.

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Supreme Court of the United States

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

I, Samuel S. Gannett, Washington, D. C., Commissioner appointed under decree of the Court rendered April 13, 1931,* to run, locate, plat, and mark the boundary between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the south—have the honor to submit the following report with an accompanying map. The map is marked as follows:

* 283 U. S. 791.

Supreme Court of the United States

OCTOBER TERM, 1932

No. 6, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI, DEFENDANT.

MAP OF THE BOUNDARY LINE BETWEEN LOUISIANA AND MISSISSIPPI IN THE VALLEY OF THE MISSISSIPPI RIVER BETWEEN THE PARALLEL OF 32 DEGREES AND 39 MINUTES NORTH LATITUDE AND THE DIVISION LINE BETWEEN ISSAQUENA AND WARREN COUNTIES, MISSISSIPPI (AS EXTENDED WESTWARD), AS SURVEYED IN 1932 IN ACCORDANCE WITH THE TERMS OF THE ABOVE-ENTITLED CAUSE.

Section 3 of the decree specifies as follows:*

"That immediately prior to the avulsion of 1912-1913 the boundary line between the State of Louisiana and the State of Mississippi between latitude 32 degrees 39 minutes on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the south, was at the place and line which was the thread of the main channel of the Mississippi River as it then ran; and that, the current having since ceased to flow in part of said channel as it existed prior to said avulsion, because of the new channel produced thereby, at this time the true boundary line between the State of Louisiana and the State of Mississippi in that part and so much of the above area as was affected by the avulsion (between said North and South points) is the middle of the navigable channel of the Mississippi River as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion of 1912-1913."

* 283 U. S. 792.

The most reliable and accurate record of location of the thread of the main channel of the Mississippi River for the dates in the area specified in section 3 of the decree is that given on chart No. 47 of the Missisippi River Commission Survey of 1913-1915.[1]

Method of Procedure

Field work of running, locating, and marking the boundary line was begun early in October, 1932, and completed in November, 1932. From investigations made on the ground it was found that a little more than 2.5 miles of the original channel had been filled up by silt in the 20 years since the avulsion of 1912-1913, so that it was feasible to erect several wooden and substantial concrete monuments on that part of the line. Water or soft swampy soil along the remainder of the original channel prevented marking by monuments, but angle points along this portion of the State line are defined by latitude and longitude, scaled from Chart 47 with several monuments erected on solid land adjacent to the line to which those positions could be referred and adjusted.

B. M. Noah of the Mississippi River Commission in south central part of Newman Towhead furnished the initial point from which to begin the survey. This bench mark is shown on Chart 47 and described in Volume 2 of Descriptions, elevations, and geodetic positions of Permanent Marks Survey Mississippi River, Cairo, Ill., to Gulf of Mexico, 1915. A careful transit line was run from B. M. Noah westward until it intersected the thread of the main channel of the Mississippi River as it existed at the time of the avulsion of 1912-1913 (shown on Chart 47 of Mississippi River Commission), thence northward along said thread of main channel as far as conditions of soil at the time of the survey in 1932 would permit.

Issaquena-Warren County Line

The Issaquena-Warren County line (the southern terminus of the boundary line by Sec. 3 of the decree of the

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[1] Defendant's Exhibit 6-D, Complainant's Exhibit F.

Court) was identified on the ground on the south side of section 33, T. 9 N., R. 8 W., and on north side of section 4, T. 18 N., R. 2 E., by two line trees marked with four hacks on east and west sides. One a hackberry tree more than two feet in diameter is about 215 feet east of public road and the other an oak 15 inches in diameter is 1,920 feet east of road. Other trees close to county line were marked with hacks on north or south sides. At the southeast corner of section 33 was found a stake driven in the ground and standing 2.5 feet high. Witness trees were noted as follows marked facing the stake, a blazed oak tree 24 feet distant, true bearing S. 55° 16′ W.; a hackberry tree cut with large cross, distant 18.6 feet, true bearing N. 19° 31′ E.; a hackberry tree cut with large cross, distant 12.7 feet, true bearing N. 54° 52′ E. These trees are approximately 15 inches in diameter. The wooden stake at southeast corner of section 33 was replaced by an iron angle bar 6 feet long and driven 3 feet in the ground.

Four permanent concrete marks (reference points numbered 2, 3, 4, and 5) were placed on Issaquena-Warren County line near public road and present levee and one a quarter of a mile west of levee.

Methods of Survey

The transit traverse lines were referred to the true meridian by observations on Polaris taken at the most suitable locations, and distances were measured with a steel tape 300 feet in length under a tension of 20 pounds. Angles at stations along the traverse lines were measured at least 4 times with a transit having a circle 6½ inches in diameter reading by 2 verniers to 30 seconds of arc. A reference line was measured along the levee adjacent to the boundary line with a check base at stations 17-17A near reference monument No. 1. Ties were made to P. B. M. 96/1, P. B. M. Albemarle, B. M. 97/a, and P. B. M. Bellevue, all being marks of the Mississippi River Commission. An independent check of survey work by engineers of the Louisiana-Mississippi Boundary Commission in 1932 was obtained by comparison with results of survey lines of 1931 by the Corps of Engineers, U. S. Army, Vicksburg District.

Acknowledgment is due the Mississippi Levee Board, Greenville, Miss., the Mississippi River Commission and the Corps of Engineers, U. S. Army Vicksburg District for maps and other valuable survey material furnished for use of the Louisiana-Mississippi Boundary Line Commission, also to the Department of the Interior U. S. Geological Survey for instruments used in the field and for use of room for office work in Washington, D. C. The cost of survey of the boundary line was materially reduced thereby.

The instrumental work of 1932 along the disputed Louisiana-Mississippi Boundary Line was done by E. L. McNair, geodetic engineer, chief of field party; for more than 30 years an employee of the United States Department of the Interior Geological Survey. Mr. McNair was also chief of field party in the survey and monumenting of the 100th Meridian Boundary Line between Oklahoma and Texas, as noted in report of the Commissioner for the Supreme Court of the United States, October Term 1929, No. 6, Original. Mr. McNair was also chief of field party in the survey and monumenting of the New Mexico-Texas boundary line in the Valley of the Rio Grande, as noted in report of the Commissioner for the Supreme Court of the United States, October Term 1930, No. 2, Original.

THE FIELD NOTES OF THE BOUNDARY SURVEY AND OF THE TRANSIT TRAVERSE, TOGETHER WITH TABULATIONS OF TECHNICAL DATA, FOLLOW:

Detailed Description of Boundary Line

The description of the boundary line as determined in 1932 is as follows:

Beginning at Station Zero, a large concrete monument in southwest part of Newman Towhead, in latitude 32° 36′ 48.23″ longitude 91° 02′ 56.39″ from which B. M. Noah bears S. 82° 39′ 49″ E. 7,155.71 feet and B. M. 76 M bears N. 25° 48′ 40″ W., 10,316.10 feet, and triangulation station Foster bears S. 16° 14′ 57″ W., 4,695.85 feet and B. M. 97/3 bears S. 38° 52′ 42″ W., 5,076.94 feet, and angle point No. 1 bears N. 38° 53′ 52″ E., 443.72 feet, thence from angle point No. 1 to angle point No. 2 N. 38° 53′ 52″ E., 693.40 feet, thence

from angle point No. 2 to angle point No. 3 N. 31° 15′ 30″ E., 665.11 feet, thence from angle point No. 3, marked by a concrete monument from which B. M. Noah bears S. 68° 35′ 22″ E., 6,485.53 feet, and B. M. 76 M bears N. 35° 19′ 10″ W., 9,600.74 feet, and angle point No. 4 bears N. 19° 26′ 00″ E., 950.27 feet; thence from angle point No. 4 to angle point No. 5, N. 37° 15′ 52″ E., 760. 25 feet; thence from angle point No. 5 from which B. M. Noah bears S. 53° 40′ 24″ E., 6,530.94 feet and B. M. 76 M bears N. 44° 58′ 22″ W., 8,951.39 feet, N. 30° 34′ 00″ E., 900.10 feet to angle point No. 6; thence from angle point No. 6, N. 17° 31′ 45″ E., 849.14 feet to angle point No. 7 marked by a concrete monument, thence from angle point No. 7 from which B. M. Noah bears S. 39° 49′ 40″ E., 7,101.42 feet and B. M. 76 M bears N. 56° 00′ 07″ W., 8,491.20 feet to angle point No. 8, N. 1° 18′ 00″ W., 845.30 feet, thence from angle point No. 8, N. 4° 15′ 03″ E., 950.06 feet to angle point No. 9, thence from angle point No. 9, N. 8° 56′ 40″ E., 744.25 feet to angle point No. 10, marked by a concrete monument, thence from angle point No. 10 from which B. M. Noah bears S. 28° 45′ 58″ E., 9,105.27 feet and B. M. 76 M bears N. 72° 52′ 33″ W., 7,540.45 feet, N. 27° 13′ 54″ E., 668.42 feet to angle point No. 11, thence from angle point No. 11 N. 22° 25′ 13″ E., 800.60 feet to angle point No. 12, thence from angle point No. 12 from which B. M. 76 M bears N. 83° 32′ 03″ W., 7,867.14 feet, and reference Monument No. 1 bears N. 24° 33′ 45″ E., 5,366.77 feet N. 40° 39′ 39″ E., 777.20 feet to angle point No. 13, thence from angle point No. 13 from which B. M. 76 M bears N. 87° 57′ 36″ W., 8,328.62 feet and reference Monument No. 1 bears N. 21° 53′ 41″ E., 4,625.09 feet N. 54° 14′ 38″ E., 838.66 feet to angle point No. 14, thence from angle point No. 14 N. 73° 22′ 23″ E., 795.74 feet to angle point No. 15 marked by a concrete monument, thence from angle point No. 15 from which B. M. Noah bears S. 9° 43′ 36″ E., 10,778.51 feet and reference monument No. 1 bears N. 4° 30′ 47″ E., 3,584.81 feet N. 14° 00′ 04″ E., 1,390.35 feet to angle point No. 16, thence from angle point No. 16 from which reference monument No. 1 bears N. 1° 23′ 45″ W., 2,225.36 feet N. 74° 39′ 06″ E., 836.2 feet to angle point 17-B from which reference monument No. 1

bears N. 23° 14′ 46″ W., 2,180.06 feet, thence from angle point 17-B N. 49° 10′ 55″ E., 1,250.8 feet to angle point No. 18 from which reference monument No. 1 bears N. 56° 43′ 55″ W., 2,161.15 feet, thence from angle point No. 18, S. 62° 41′ 17″ E., 953.7 feet to angle point No. 19 from which B. M. 77 M bears N. 60° 54′ 43″ E., 2,683.53 feet, thence from angle point No. 19 S. 77° 33′ 57″ E., 1,032.4 feet to angle point No. 20 from which B. M. 77 M bears N. 41° 12′ 20″ E., 2,029.51 feet thence from angle point No. 20 S. 49° 12′ 26″ E., 736.4 feet to angle point No. 21 from which B. M. 77 M bears N. 21° 12′ 57″ E., 2,153.92 feet, thence from angle point No. 21 S. 42° 24′ 55″ E., 2,436.8 feet to angle point No. 22 from which B. M. 77 M bears N. 12° 47′ 11″ W., 3,903.66 feet, thence from angle point No. 22 S. 45° 25′ 45″ E., 887.2 feet to angle point No. 23 from which B. M. Noah bears S. 27° 41′ 32″ W., 10,671.31 feet, thence from angle point No. 23, S. 37° 10′ 48″ E., 857.5 feet to angle point No. 24, thence from angle point No. 24, S. 20° 25′ 44″ E., 901.6 feet to angle point No. 25, from which B. M. Noah bears S. 36° 10′ 39″ W., 9,812.76 feet, thence from angle point No. 25, S. 35° 08′ 41″ E., 1,515.3 feet to angle point No. 26, thence from angle point No. 26 S. 18° 36′ 38″ E., 825.4 feet to angle point No. 27, from which B. M. Noah bears S. 49° 35′ 12″ W., 9,099.67 feet, thence from angle point No. 27, S. 11° 05′ 38″ E., 791 feet to angle point No. 28, thence from angle point No. 28, S. 17° 48′ 44″ E., 785.6 feet to angle point No. 29 from which B. M. Noah bears S. 59° 08′ 12″ W., 8,528.73 feet and P. B. M. Albemarle bears S. 38° 08′ 12″ E., 4,648.62 feet, thence from angle point No. 29 S. 7° 11′ 03″ E., 1,703.2 feet to angle point No. 30, thence from angle point No. 30, S. 5° 17′ 45″ W., 834.3 feet to angle point No. 31 from which P. B. M. Albemarle bears S. 67° 26′ 42″ E., 2,961.20 feet, thence from angle point No. 31 S. 28° 30′ 26″ W., 860.3 feet to angle point No. 32 from which B. M. Noah bears S. 81° 08′ 12″ W., 7,131.56 feet and P. B. M. Albemarle bears S. 83° 06′ 50″ E., 3,168.15 feet thence from angle point No. 32 S. 15° 09′ 30″ E., 759.1 feet to angle point No. 33 from which P. B. M. Albemarle bears N. 83° 10′ 20″ E., 2,967.89 feet thence from angle point No. 33 S. 17° 47′ 47″ W., 1,656.9 feet to angle point No. 34, from

which P. B. M. Albemarle bears N. 60° 47′ 36″ E., 3,956.21 feet, thence from angle point No. 34, S. 42° 26′ 12″ W., 716.2 feet to angle point No. 35, thence from angle point No. 35, S. 30° 20′ 11″ W., 872.3 feet to angle point No. 36 from which B. M. Noah bears N. 66° 47′ 43″ W., 6,326.40 feet and B. M. 97/a bears S. 12° 28′ 27″ W., 4,996.20 feet, thence from angle point No. 36 S. 31° 11′ 56″ W., 1,187.4 feet to angle point No. 37, thence from angle point No. 37, S. 45° 04′ 26″ W., 768.5 feet to angle point No. 38 from which B. M. Noah bears N. 48° 58′ 21″ W., 6,171.20 feet and B. M. 97/a bears S. 1° 23′ 16″ E., 3,320.88 feet, thence from angle point No. 38 S. 53° 33′ 10″ W., 794.5 feet to angle point No. 39, thence from angle point No. 39 S. 44° 03′ 56″ W., 784.8 feet to angle point No. 40 from which B. M. Noah bears N. 34° 18′ 24″ W., 6,157.94 feet and B. M. 97/a bears S. 28° 59′ 11″ E., 2,610.77 feet, thence from angle point No. 40 S. 52° 09′ 41″ W., 1,622.8 feet to angle point No. 41 from which B. M. Noah bears N. 19° 47′ 51″ W., 6,464.06 feet and B. M. 97/a bears S. 63° 10′ 09″ E., 2,854.16 feet, thence from angle point No. 41 S. 60° 15′ 21″ W., 937.1 feet to angle point No. 42 from which B. M. Noah bears N. 11° 51′ 40″ W., 6,689.70 feet and B. M. 97/a bears S. 76° 14′ 17″ E., 3,460.78 feet, thence from angle point No. 42 S. 61° 44′ 23″ W., 875.2 feet to angle point No. 43 from which B. M. 97/a bears S. 84° 20′ 55″ E., 4,151.66 feet and reference monument No. 2 bears S. 9° 08′ 43″ W., 5,810.63 feet, thence from angle point No. 43, S. 70° 05′ 50″ W., 1,041.9 feet to angle point No. 44, thence from angle point No. 44 S. 58° 31′ 11″ W., 901.9 feet to angle point No. 45 from which reference monument No. 2 bears S. 9° 32′ 35″ E., 4,980.2 feet, thence from angle point No. 45, S. 84° 07′ 48″ W., 958.2 feet to angle point No. 46, thence from angle point No. 46 S. 52° 52′ 15″ W., 738.4 feet to angle point No. 47 from which reference monument No. 2 bears S. 28° 27′ 50″ E., 4,967.83 feet, and Foster triangulation station bears N. 50° 24′ 07″ W., 7,432.22 feet, thence from angle point No. 47 S. 23° 16′ 03″ W., 699.7 feet to angle point No. 48 from which Henderson triangulation station bears S. 85° 24′ 35″ W., 10,511.08 feet and B. M. C. H. B. 3 bears S. 46° 01′ 02″ E., 2,367.71 feet, thence from angle point

No. 48 S. 40° 35′ 03″ W., 1,461.2 feet to angle point No. 49 from which Foster triangulation station bears N. 34° 44′ 18″ W., 7,897.07 feet, and B. M. 97/3 bears N. 42° 07′ 42″ W., 9,500.07 feet, and Henderson triangulation station bears N. 88° 23′ 15″ W., 9,530.49 feet, and B. M. C. H. B. 2 bears S. 71° 37′ 03″ E., 3,085.68 feet and reference monument No. 2 bears S. 53° 58′ 08″ E., 4,445.20 feet and P. B. M. Bellevue bears S. 31° 57′ 37″ E., 3,833.46 feet, thence from angle point No. 49 S. 51° 45′ 00″ W., 1,830 feet to angle point No. 50 from which reference monument No. 2 bears S. 73° 35′ 35″ E., 5,245.66 feet and P. B. M. Bellevue bears S. 58° 33′ 39″ E., 4,062.70 feet, and B. M. 97/3 bears N. 31° 06′ 43″ W., 9,552.32 feet, thence from angle point No. 50 S. 62° 30′ 00″ W.; 3,210.0 feet to angle point No. 51 the southern terminus of the boundary line in the river, from which B. M. Noah bears N. 32° 50′ 02″ E., 15,113.40 feet and reference monument No. 2 bears due east 7,879.62 feet, and P. B. M. Bellevue bears S. 84° 14′ 34″ E., 6,345.84 feet and Foster triangulation station bears N. 1° 21′ 43″ W., 9,106.75 feet and Henderson triangulation station bears N. 61° 11′ 54″ W., 5,982.43 feet and B. M. C. H. B. 4 bears S. 66° 22′ 10″ E., 3,026.50 feet, and B. M. C. H. B. 5 bears S 60° 40′ 39″ E., 3,531.63 feet.

Descriptions and geographic positions on 1927 North American datum of boundary line monuments and reference monuments along or adjacent to the Louisiana-Mississippi boundary line in the valley of the Mississippi River between the parallel of 32 degrees 39 minutes north latitude and the division line between Issaquena and Warren Counties, Mississippi, (as extended westward).

Monuments

The principal monuments consist of a concrete base 20 by 20 by 20 inches set in the ground with top flush with surface. A galvanized metal form 3 feet long, 14 inches in diameter at base, 8 inches in diameter at top, filled with concrete is embedded 6 inches in the concrete base; 30 inches showing above ground. The weight of each monument is about half a ton. State line monuments of this

BRONZE TABLET IMBEDDED IN TOP OF EACH
BOUNDARY LINE MONUMENT

style were set at angle points 0, 3, 7, 10, and 15. Reference monuments of similar style are numbered 1, 2, 3, and 5. In center of top of the metal form a bronze tablet with inscription shown facing page 10 is cemented for boundary line monuments and a similar tablet with inscription shown facing page 20 is cemented for reference points or marks. A smaller type of monument of a temporary nature, consisting of a creosoted wooden post 39 inches long and 6 inches square set 32 inches in the ground was set at angle points in the State boundary line numbered 1, 2, 4, 5, 6, 8, 9, 11, 12, 13, 14, and 16.

Several bench mark and triangulation monuments of the Mississippi River Commission and Corps of Engineers, U. S. Army, were also utilized as reference marks and their descriptions are therefore included in this report.

Geographic positions of all marks and monuments are given on the 1927 North American Datum, determined from connections made with first-order triangulation stations of the U. S. Coast and Geodetic Survey in this locality.

Positions of marks by the Corps of Engineers and Mississippi River Commission given on Memphis astronomic datum have been corrected to 1927 North American Datum by subtracting 0.81″ from latitudes and 0.15″ from longitudes.

Boundary Line Monument Zero

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, just above Newman cut-off and about 540 feet north of the present bank of Mississippi River on mostly open ground with some light brush.

It is a co ete monument with base 20 x 20 x 18 inches surmounted by frustum of a cone, encased in galvanized metal form 36 inches long with base diameter of 14 inches and top diameter of 8 inches. In top is placed a bronze tablet marked "Line Monument O", and is 30 inches above the base.

Witness marks:

A triangle cut on cottonwood tree 7″ in diam., dist. 36 ft. True Bearing S. 86° 26′ E.

A triangle cut on cottonwood tree 7″ in diam., dist. 66 ft. True Bearing S. 18° 16′ E.

A triangle cut on cottonwood tree 8″ in diam., dist. 86 ft. True Bearing N. 25° 06′ W.

Latitude 32° 36′ 48.23″. Longitude 91° 02′ 56.39″.

To monument	True Bearing	Distance—Feet
Foster Triangulation Station	S. 16° 14′ 57″ W.	4,695.85
B. M. 97/3	S. 38 52 42 W.	5,076.94
B. M. 76M	N. 25 48 40 W.	10,316.10
B. M. Noah	S. 82 39 49 E.	7,155.71

Temporary Boundary Line Monument No. 1

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 443.7 feet N. 38° 54′ E. from Boundary Monument Zero. On fairly open ground with some small brush adjacent. Marked by a creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground and a small nail in top marking angle point. No reference marks.

Latitude 32° 36′ 51.65″. Longitude 91° 02′ 53.13″.

Temporary Boundary Line Monument No. 2

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 665.1 feet S. 31° 15′ 30″ W. from concrete boundary monument No. 3. It is in a depression and amid thick small brush.

Marked by a creosoted wooden post 39 inches long and 6 inches square set 32 inches in ground and a small nail in top marking angle point. No reference marks.

Latitude 32° 36′ 56.99″. Longitude 91° 02′ 48.04″.

Boundary Line Monument No. 3

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, on west side of Newman Towhead and about 2000 feet north of Mississippi River present bank. It is on ground partly open and partly brushy.

A concrete monument with base 20 x 20 x 20 inches surmounted by frustum of a cone, encased in galvanized metal form 36 inches long with base diameter of 14 inches and top diameter of 8 inches. In top is placed a bronze tablet

marked "Line Monument 3", and is 30 inches above the base.

Witness marks:

Triangle cut on cottonwood tree 7" in diam. dist. 36.5 ft. True Bearing S. 34° 35' W.

Triangle cut on cottonwood tree 7" in diam. dist. 20 ft. True Bearing N. 53° 05' E.

Triangle cut on cottonwood tree 6" in diam. dist. 5.5 ft. True Bearing S. 37° 05' E.

Latitude 32° 37' 02.61". Longitude 91° 02' 44.01".

To monument	True Bearing	Distance—Feet
B. M. 76 M	N. 35° 19' 10" W.	9,600.74
B. M. Noah	S. 68 35 22 E.	6,485.53

Temporary Boundary Line Monument No. 4

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 950.3 feet N. 19° 26' E. from concrete Boundary Monument No. 3, in thick brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point.

Reference marks:

Triangle cut on cottonwood tree 4 inches diam., dist. 13 ft., true bearing N. 55° 26' E.

Triangle cut on cottonwood tree 4 inches diam., dist. 9 ft., true bearing N. 73° 16' E.

Latitude 32° 37' 11.48". Longitude 91° 02' 40.31".

Temporary Boundary Line Monument No. 5

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 1501 feet north and 776 feet east from concrete boundary monument No. 3 in thick brush and small timber.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point.

Reference marks:

Triangle cut on cottonwood tree 7 inches diam. dist. 16 ft. true bearing S. 74° 26' E.

Triangle cut on cottonwood tree 12 inches diam. dist. 19 ft. true bearing S. 25″ 04′ W.

Triangle cut on cottonwood tree 8 inches diam. dist. 26 ft. true bearing N. 58° 07′ E.

Latitude 32° 37′ 17.47″. Longitude 91° 02′ 34.93″.

To monument	True bearing	Distance—Feet
B. M. 76 M	N. 44° 58′ 22″ W.	8,951.39
B. M. Noah	S. 53 40 24 E.	6,530.94

Temporary Boundary Line Monument No. 6

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 849.14 feet S. 17° 31′ 45″ W. from concrete boundary monument No. 7 in thick timber and brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point.

Reference marks:

Triangle cut on cottonwood tree 6 inches in diam. dist. 18.5 ft. true bearing N. 82° 56′ E.

Triangle cut on willow tree 11 inches in diam. dist. 11 ft. true bearing S. 12° 27′ W.

Triangle cut on cottonwood tree 12 inches in diam. dist. 30 ft. true bearing S. 82° 10′ W.

Latitude 32° 37′ 25.14″. Longitude 91° 02′ 29.58″.

Boundary Line Monument No. 7

On Issaquena County, Mississippi and East Carroll Parish, Louisiana —, on west side of Newman Towhead about 5800 feet by line north and east from present bank of Mississippi River. It is surrounded by brush and timber.

A concrete monument with base 20x20x20 inches surmounted by frustum of a cone, encased in galvanized metal form 36 inches long with base diameter of 14 inches and top diameter of 8 inches. In top is placed a bronze tablet marked "Line Monument 7", and is 30 inches above the base.

Witness marks:

Triangle cut on sycamore tree 6″ in diam., dist. 13.5 ft. true bearing N. 42° 52′ E.

Triangle cut on willow tree 11″ in diam., dist 19.5 ft. true bearing S. 75° 18′ E.

Triangle cut on cottonwood tree 6″ in diam., dist. 16.4 ft. true bearing S. 8° 32′ E.

Latitude 32° 37′ 33.15″. Longitude 91° 02′ 26.60″.

To monument	True Bearing	Distance—Feet
B. M. 76 M	N. 56° 00′ 07″ W.	8,491.20
B. M. Noah	S. 39 49 40 E.	7,101.42

Temporary Boundary Line Monument No. 8

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 845.3 feet N. 1° 18′ W. from concrete boundary monument No. 7, in timber with little brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point.

Reference marks:

Triangle cut on tree 12 inches in diam. dist. 39 ft. true bearing N. 76° 38′ W.

Triangle cut on tree 9 inches in diam. dist. 19.7 ft. true bearing N. 6° 42′ E.

Triangle cut on tree 14 inches in diam. dist. 29 ft. true bearing S. 45° 08′ E.

Latitude 32° 37′ 41.50″ Longitude 91° 02′ 26.82″.

Temporary Boundary Line Monument No. 9

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 744.25 feet S. 8° 56′ 40″ W. from concrete boundary monument No. 10, in timber and with little brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point.

Reference marks:

Triangle cut on willow tree 8 inches in diam. dist. 10.8 ft. true bearing N. 35° 39′ W.

Triangle cut on willow tree 7 inches in diam. dist. 8.2 ft. true bearing N. 84° 48′ E.

Triangle cut on willow tree 10 inches in diam. dist. 16.7 ft. true bearing S. 41° 15′ E.

Latitude 32° 37′ 50.88″. Longitude 91° 02′ 26.00″.

Boundary Line Monument No. 10

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, on west side of Newman Towhead, about 8300 feet north and east from present bank of Mississippi River. It is standing amid willow and cottonwood timber with little brush.

A concrete monument with base 20x20x20 inches surmounted by frustum of a cone, encased in galvanized metal form which is 36 inches long with base 14 inches in diameter and top 8 inches in diameter. In top is placed a bronze tablet marked "Line Monument 10" and is 29 inches above the base.

Witness marks:

Cross (X) cut on willow tree 9" in diam. dist. 23 ft. True Bearing S. 41° 00′ W.

Cross (X) cut on willow tree 9" in diam. dist. 17 ft. True Bearing N. 52° 30′ W.

Cross (X) cut on willow tree 9" in diam. dist. 28.4 ft. True Bearing N. 42° 47′ E.

Cross (X) cut on willow tree 6" in diam. dist. 7.5 ft. True Bearing S. 64° 00′ E.

Latitude 32° 37′ 58.16". Longitude 91° 02′ 24.65".

To monument	True Bearing	Distance—Feet
B. M. 76 M	N. 72° 52′ 33" W.	7,540.45
B. M. Noah	S. 28 45 58 E.	9,105.27

Temporary Boundary Line Monument No. 11

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 668.4 feet N. 27° 14′ E. from concrete boundary monument No. 10 in timber with little brush.

A creosoted wooden post 39 inches long and 6 inches in diameter, set 32 inches in ground, with nail in top marking angle point.

Witness marks:

Triangle cut on willow tree 7" in diam. dist. 14 ft. True Bearing S. 85° 28′ W.

Triangle cut on willow tree 8" in diam. dist. 13 ft. True Bearing N. 6° 14′ E.

Triangle cut on willow tree 9" in diam. dist. 25 ft. True Bearing S. 69° 36′ E.

Latitude 32° 38′ 04.04". Longitude 91° 02′ 21.07".

Temporary Boundary Line Monument No. 12

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 1334 feet north and 611 feet east of concrete boundary monument No. 10 in timber with little brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, with small nail in top marking angle point.

Witness marks:

A triangle cut on willow tree 8″ in diam. dist. 19 ft., True Bearing N. 78° 25′ W.

A triangle cut on willow tree 8″ in diam. dist. 3.3 ft., True Bearing N. 16° 35′ W.

A triangle cut on willow tree 7″ in diam. dist. 13.8 ft., True Bearing N. 21° 20′ E.

A triangle cut on willow tree 8″ in diam. dist. 17 ft., True Bearing S. 36° 45′ E.

Latitude 32° 38′ 11.36″. Longitude 91° 02′ 17.50″.

To monument	True Bearing	Distance—Feet
B. M. 76 M.....	N. 83° 32′ 03″ W.	7,867.14
Reference Monument No. 1.....	N. 24 33 44 E.	5,366.77

Temporary Boundary Line Monument No. 13

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 718 feet south and 1443 feet west from concrete boundary monument No. 15, in timber with little brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground and a small nail in top marking angle point.

Witness Marks:

Triangle cut on willow tree 9″ in diam., dist. 20.8 ft., True Bearing N. 25° 05′ W.

Triangle cut on willow tree 9″ in diam., dist. 21 ft., True Bearing S. 68° 05′ E.

Triangle cut on willow tree 9″ in diam., dist. 21 ft., True Bearing S. 35° 30′ W.

Latitude 32° 38′ 17.20″. Longitude 91° 02′ 11.58″.

To monument	True Bearing	Distance—Feet
B. M. 76 M.....	N. 87° 57′ 36″ W.	8,328.62
Reference monument No. 1.....	N. 21 53 41 E.	4,625.09

Temporary Boundary Line Monument No. 14

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 795.7 feet S. 73° 22′ W. from concrete boundary monument No. 15, in timber with little brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and small nail in top marking angle point.

Witness marks:

Triangle cut on willow tree 9″ in diam., dist. 20 ft., True Bearing N. 71° 25′ W.

Triangle cut on willow tree 10″ in diam., dist. 10 ft., True Bearing N. 10° 21′ E.

Triangle cut on willow tree 11″ in diam., dist. 16 ft., True Bearing S. 25° 25′ E.

Latitude 32° 38′ 22.05″. Longitude 91° 02′ 03.63″.

Boundary Line Monument No. 15

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, in northwest portion of Newman Towhead, about 3400 feet south of levee. It is surrounded by mostly willow timber with little underbrush.

A concrete monument with base 20x20x20 inches surmounted by frustum of a cone, encased in galvanized metal form 36 inches long with base diameter of 14 inches and top diameter of 8 inches. In top is placed a bronze tablet marked "Line Monument 15", and is 30 inches above the base.

Witness marks:

Triangle cut on willow tree 9″ in diam., dist. 14 ft., True Bearing N. 33° 00′ W.

Triangle cut on willow tree 12″ in diam., dist. 25 ft., True Bearing N. 10° 37′ E.

Triangle cut on willow tree 9″ in diam., dist. 12.5 ft., True Bearing S. 67° 13′ E.

Latitude 32° 38′ 24.30″. Longitude 91° 01′ 54.71″.

To monument	True Bearing	Distance—Feet
Reference monument No. 1.....	N. 4° 30′ 47″ E.	3,584.81
B. M. Noah.....	S. 9 43 36 E.	10,778.51

Temporary Boundary Line Monument No. 16

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, about 1100 feet south of old Albemarle bend, 1390.4 feet N. 14° 00′ E. from concrete boundary monument No. 15, on low mucky ground with timber on south and willow brush on north.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point. No witness marks.

Latitude 32° 38′ 37.65″. Longitude 91° 01′ 50.78″.

To monument	True Bearing	Distance—Feet
Boundary Line Monument No. 15.	S. 14° 00′ 04″ W.	1,390.35
Reference monument No. 1.....	N. 1 23 45 W.	2,225.36

Reference Point Monument No. 1, Issaquena County, Mississippi

About 1 mile east and north down the levee from Tri-County Hunting Club, in approximate locality of corner of sections 4, 5, 8 & 9, T. 9 N. R. 8 W., apparently in southwest corner of section 4, 170 feet south of roadway which parallels levee, 45 feet south of unoccupied cabin with three outbuildings, 170 feet north of levee at a point which is about 3680 feet easterly from west end of a levee tangent which is nearly 6100 feet long. A concrete monument with base 20 by 20 by 18 inches surmounted by frustum of a cone encased in galvanized metal form 34 inches long with base diameter of 14 inches and top diameter of 8 inches. In top is a bronze tablet marked "Reference Point No. 1." Top is 29 inches above base.

To transit line point 17 on top of levee, a wooden post 6 inches square and 39 inches long is 683.86 feet in true bearing S. 63° 58′ 30″ W.

Latitude 32° 38′ 59.66″. Longitude 91° 01′ 51.41″.

To monument or angle point	True Bearing	Distance—Feet
Angle Point No. 12.....	S. 24° 33′ 59″ W.	5,366.77
Boundary Line Monument No. 15.	S. 4 30 49 W.	3,584.81
Angle Point No. 13.....	S. 21 53 52 W.	4,625.09
Angle Point No. 18.....	S. 56 44 06 E.	2,161.15
Angle Point No. 17 B.....	S. 23 14 52 E.	2,180.06
Temporary boundary line Monument No. 16.....	S. 1 23 45 E.	2,225.36

Reference Point Monument No. 2, on Issaquena-Warren County Line, Mississippi

3148 feet west of southeast corner of section 33 T. 9 N. R. 8 W., 997 feet East of top of present levee, 203 feet east of a public road and 12 feet west of a large hackberry tree marked as a line tree. Surrounded by brush and timber. A concrete monument with base 20x20x18 inches surmounted by frustum of a cone encased in galvanized metal form with base diameter of 14 inches and top diameter of 8 inches, with bronze tablet in top stamped "Reference Monument No. 2." Top of monument is 29 inches above base.

Latitude 32° 34′ 33.535″. Longitude 91° 01′ 37.142″.

To monument or angle point	True Bearing	Distance—Feet
Reference Monument No. 3	Due West	536.83
Angle Point No. 51	Due West	7,879.62
Angle Point No. 50	N. 73° 35′ 03″ W.	5,245.66
Angle Point No. 49	N. 53 57 45 W.	4,445.20
Angle Point No. 47	N. 28 27 35 W.	4,967.83
Angle Point No. 45	N. 9 32 30 W.	4,980.02
Angle Point No. 43	N. 9 08 37 E.	5,810.63
B. M. 97/a	N. 43 29 33 E.	7,344.38

Reference Point Monument No. 3, Issaquena-Warren County Line, Mississippi

On south side of section 33 T. 9 N. R. 8 W., 460 feet east of top of levee and 335 feet west of center of public road crossing county line. A concrete monument with base 20x20x20 inches surmounted by concrete frustum of a cone, encased in galvanized metal form 34 inches long with base diameter of 14 inches and top diameter of 8 inches, with bronze tablet in top marked "Reference Point No. 3."

Top is 28 inches above base.

Monument is in timber and brush.

To reference monument No. 2 is 536.83 feet due east.

To reference monument No. 4 is 460.02 feet due west.

Latitude 32° 34′ 33.535″. Longitude 91° 01′ 43.415″.

Reference Point Monument No. 4, Issaquena-Warren County Line, Mississippi

On top of present levee (1932). A concrete block 15 by 15 by 15 inches set flush with surface of ground with bronze tablet in top marked "Reference Point No. 4."

BRONZE TABLET IMBEDDED IN TOP OF EACH REFERENCE POINT MONUMENT

This is station 509 plus 1166.2 of U. S. Engineer's transit line on top of levee and 8 feet west of station 9287 plus 15 of the Mississippi Levee Board's transit line which is marked by iron posts every 1000 feet.

Reference Monument No. 3 is 460.02 feet due east.

Reference Monument No. 5 is 1314.77 feet due west.

Latitude 32° 34′ 33.535″. Longitude 91° 01′ 48.791″.

Reference Point Monument No. 5, Issaquena-Warren County Line, Mississippi

1315 feet west of top of present levee (1932) in bushy bottom land with some large timber to the north. A concrete monument with base 20 by 20 by 20 inches surmounted by concrete frustum of cone, encased in galvanized metal form 34 inches long with base diameter of 14 inches and top diameter of 8 inches with bronze tablet in top marked "Reference Monument No. 5."

Top is 28 inches above base.

Triangle cut on pecan tree 7 inches diameter, distance 36.5 feet, True bearing N. 4° 30′ E.

Triangle cut on pecan tree 10 inches diameter, distance 120 feet, True bearing N. 3° 25′ E.

Angle Point No. 51 is 5568.0 feet due west.

Latitude 32° 34′ 35.535″. Longitude 91° 02′ 04.155″.

Marks of the Mississippi River Commission and of the Corps of Engineers, U. S. Army used as Reference Marks by the Louisiana-Mississippi Boundary Line Commission, 1932

B. M. Noah, East Carroll Parish, Louisiana

A mark of the Mississippi River Commission in south central part of Newman Towhead, 0.5 mile north of bank of Mississippi River, 1.5 mile north of Chotard Landing, about 1500 feet easterly from open pasture land, surrounded by cottonwood and willow timbers.

Station mark: An iron pipe 4 inches in diameter and 4 feet long resting on a vitrified tile 18 inches square and 4 inches thick. Top of pipe is but little above the level of

ground surface, and in 1932 was filled around with concrete block 20 inches square.

Elevation of bolt in tile underground, 90.04 feet.

Elevation of top of cap on post, 94.04 feet.

Witness marks:

Cottonwood tree, 24 inches diameter, S. 40° W., 35 feet distant.

Cottonwood tree, 18 inches diameter, S. 49° W., 19.5 feet distant.

Cottonwood tree, 26 inches diameter, S. 78° 30′ W., 8 feet distant.

Cottonwood tree, 24 inches diameter, N. 46° W., 18.5 feet distant.

Willow tree, 15 inches diameter, N. 18° W., 50 feet distant.

Latitude 32° 36′ 39.180″. Longitude 91° 01′ 33.424″.

To Boundary Monument or Angle Point	True Bearing	Distance—Feet
Angle Point No. 51	S. 32° 50′ 53″ W.	15,113.40
Monument No. 0	N. 82 39 04 W.	7,155.71
Monument No. 3	N. 68 34 44 W.	6,485.53
Angle Point No. 5	N. 53 39 51 W.	6,530.94
Monument No. 7	N. 39 49 11 W.	7,101.42
Monument No. 10	N. 28 45 31 W.	9,105.27
Monument No. 15	N. 9 43 25 W.	10,778.51
Angle Point No. 23	N. 27 41 01 E.	10,671.31
Angle Point No. 25	N. 36 10 03 E.	9,812.76
Angle Point No. 27	N. 49 34 28 E.	9,099.67
Angle Point No. 29	N. 59 07 25 E.	8,528.73
Angle Point No. 32	N. 81 07 28 E.	7,131.56
Angle Point No. 36	S. 66 48 20 E.	6,326.40
Angle Point No. 38	S. 48 58 50 E.	6,171.20
Angle Point No. 40	S. 34 18 46 E.	6,157.94
Angle Point No. 41	S. 19 48 05 E.	6,464.06
Angle Point No. 42	S. 11 51 49 E.	6,689.70

B. M. 97/3, East Carroll Parish, Louisiana

A mark of the Mississippi River Commission, on Willow Point, 380 meters back of river bank at point 250 meters above Willow Point Landing; 250 meters back of bank of chute at point 420 meters below main river bank, in timber 30 meters below line between Bell and Willow Point Plantations.

Station mark: A stone post covered with sediment.

Latitude 32° 36′ 09.12″. Longitude 91° 03′ 33.64″.

Elevation of top of post, 98.6 feet.

To monument or Angle Point	True Bearing	Distance—Feet
Monument Zero	N. 38° 52′ 22″ E.	5,076.94
Foster Triangulation Station	S. 73 28 12 E.	1,953.45
Angle Point No. 49	S. 42 08 22 E.	9,500.07
Angle Point No. 50	S. 31 07 14 E.	9,552.32

Henderson, East Carroll Parish, Louisiana

A secondary triangulation station of the Mississippi River Commission on right bank of Mississippi River in woods one mile above store building on the Henderson Plantation, 0.5 mile above a point opposite Brunswick Landing.

Station mark: An old concrete post with gas pipe set beside it.

Latitude 32° 35′ 02.05″. Longitude 91° 04′ 10.49″.

Elevation; top of concrete post, 93.02 feet.

To Angle Point	True Bearing	Distance—Feet
Angle Point No. 48	N. 85° 23′ 29″ E.	10,511.08
Angle Point No. 49	S. 88 24 15 E.	9,530.49
Angle Point No. 51	S. 61 12 27 E.	5,982.43

Foster, East Carroll Parish, Louisiana

A secondary triangulation point of the Mississippi River Commission on right bank of Mississippi River on first towhead below Willow Point, 630 meters down chute from head of bar and back 160 meters from west bank of towhead; in cottonwood timber.

Station mark: Iron pipe set on vitrified tile underground mark.

Elevation; bolt in tile underground, 95.94 feet.

Elevation; cap on pipe underground, 99.92 feet.

Latitude 32° 36′ 03.62″. Longitude 91° 03′ 11.75″.

To monument or Angle Point	True Bearing	Distance—Feet
B. M. 97/3	N. 73° 28′ 00″ W.	1,953.45
Monument Zero	N. 16 14 49 E.	4,695.85
Angle Point No. 47	S. 50 24 43 E.	7,432.22
Angle Point No. 49	S. 34 44 46 E.	7,897.07
Angle Point No. 51	S. 1 21 44 E.	9,106.75

P. B. M. Bellevue, Warren County, Mississippi.

A mark of the Mississippi River Commission on the Bellevue plantation, 0.6 mile southeast of Bellevue Landing, in northwest part of section 4 T. 18 N. R. 2 E.; 18.6

meters back of center of main levee, on top of small private levee and near its upper end, 13 meters east of junction with main levee, 200 meters northwest of Mt. Zion Church.

Station mark: An iron post on tile underground mark.

Latitude 32° 34′ 27.23″. Longitude 91° 01′ 55.44″.

Elevation of bolt in tile, 100.617 feet.

Elevation of cap on pipe, 104.622 feet.

To Angle Point	True Bearing	Distance—Feet
Angle Point No. 51.....	N. 84° 13′ 54″ W.	6,345.84
Angle Point No. 50.....	N. 58 33 17 W.	4,062.70
Angle Point No. 49.....	N. 31 57 25 W.	3,833.16

P. B. M. Albemarle, Issaquena County, Mississippi

A mark of the Mississippi River Commission on left bank of Mississippi River east of Newman Towhead, 2.5 miles above Chotard Landing, 1,660 meters above junction of old and new levees, 3 miles northeast along levee from Issaquena-Warren county line, near center of section 23 T. 9 N. R. 8 W.

Station mark: Iron post on tile underground mark.

Latitude 32° 36′ 46.30″. Longitude 90° 59′ 34.28″.

Elevation of cap on pipe, 93.738 feet.

Elevation of bolt in tile, 89.738 feet.

To Angle Point	True Bearing	Distance—Feet
Angle Point No. 34.....	S. 60° 47′ 58″ W.	3,956.21
Angle Point No. 33.....	S. 83 10 38 W.	2,967.89
Angle Point No. 32.....	N. 83 06 30 W.	3,168.15
Angle Point No. 31.....	N. 67 26 25 W.	2,961.20
Angle Point No. 29.....	N. 38 07 54 W.	4,648.62

P. B. M. 96/1, Issaquena County, Mississippi

A mark of the Mississippi River Commission, in west central part of section 7 T. 9 N. R. 8 W. on left bank of Mississippi River, on the Dunbarton Plantation; northwardly from Willow Point; 1.25 mile along levee above old Duvall Landing; 400 meters above junction of old and new levees at Burleigh cotton gin; 440 meters back of levee, 674 meters 125° 30′ from Burleigh gin, in low ground at edge of brush and scattering timber; 25 meters northwest of a large spreading willow.

Station mark: Iron post set on stone subsurface mark.

Latitude 32° 38′ 24.04″. Longitude 91° 03′ 59.38″.

Elevation, mean gulf level, top of stone 93.672 feet.
Elevation, mean gulf level, cap on pipe 97.670 feet.
Reference to P. B. M. 96/2.
Approximate true bearing S. 6° 42′ W.
Approximate distance 610.6 meters.

P. B. M. 96/2, Issaquena County, Mississippi

A mark of the Mississippi River Commission near southwest corner section 7 T. 9 N. R. 8 W., on left bank of Mississippi River, north of Willow Point; 1.25 miles above old Duvall Landing; on the old Dunbarton Plantation; 160 meters outside of levee at a point 500 meters above junction of old and new levees.

Station mark: Stone post, top about level with ground.
Latitude 32° 38′ 04.35″. Longitude 91° 04′ 02.11″.
Elevation, top of stone post 97.528 feet.
Reference to P. B. M. 96/1, true bearing N. 6° 42′ E., distance 2,003.3 feet.

P. B. M. 97/a, Issaquena County, Mississippi

A mark of the Mississippi River Commission, nearly on line between sections 27 and 34 T. 9 N. R. 8 W., 0.75 mile east from foot of Newman Towhead and 0.85 mile east from Chotard Landing, on east-west private road at northeast corner of junction of roads, in southwest corner of field 6 meters north of center of east-west road, 21 meters from northeast corner of store building 90 meters from northeast corner of cotton gin.

Station mark: Iron post set over tile underground mark.
Latitude 32° 35′ 26.25″. Longitude 91° 00′ 38.063″.
Elevation, bolt in tile underground 92.03 feet.
Elevation, bolt in cap on post 96.02 feet.

To Angle Point	True Bearing	Distance—Feet
Angle Point No. 43	N. 84° 20′ 29″ W.	4,151.66
Angle Point No. 42	N. 76 13 56 W.	3,460.78
Angle Point No. 41	N. 63 09 53 W.	2,854.16
Angle Point No. 40	N. 28 59 03 W.	2,610.77
Angle Point No. 38	N. 1 23 16 W.	3,320.88
Angle Point No. 36	N. 12 28 20 E.	4,996.20

B. M. 76 M., Issaquena County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River approximately 1,200 feet northeast of old Magna Vista Store, near foundation of old house, on property of Mr. Mayer, 1,500 feet to land side of levee station 8780, 500 feet east of gravel road, in open field under 24 inch pecan tree.

Station mark: Iron post with brass cap on stone subsurface marker.

Latitude 32° 38′ 20.12″. Longitude 91° 03′ 48.91″.

Elevation, mean Gulf level, bolt 93.977 feet.

Elevation, mean Gulf top of cap 97.992 feet.

References to P. B. M. 96/1, true bearing N. 66° 07′ 10″ W., distance 978.56 feet.

Triangular blaze on 24 inch pecan tree, true bearing S. 43° 31″ E., distance 11 feet.

Triangular blaze on 24 inch cottonwood tree, true bearing S. 69° 47′ 00″ E., distance 94 feet.

Monument or Angle Point	True Bearing	Distance—Feet
Angle Point No. 13	S. 87° 58′ 29″ E.	8,328.62
Angle Point No. 12	S. 83 32 52 E.	7,867.14
Monument No. 10	S. 72 53 19 E.	7,540.45
Monument No. 7	S. 56 00 51 E.	8,491.20
Angle Point No. 5	S. 44 59 02 E.	8,951.39
Monument No. 3	S. 35 19 45 E.	9,600.74
Monument Zero	S. 25 49 08 E.	10,316.10

B. M. 77 M., Issaquena County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River, approximately 6 miles north along levee from Warren-Issaquena County line, 5 miles north along levee from Chotard Landing; on Robbins-Bonelli property, 500 feet to land side of levee at levee station 8950, at intersection of pecan tree hedge row which runs east and west and wire fence which runs north and south, 500 feet east of old St. Luke's Methodist Church, 4 feet from 24 inch pecan tree.

Station mark: Iron post with brass cap, on stone subsurface marker.

Latitude 32° 38′ 56.51″. Longitude 91° 00′ 52.94″.

Elevation, mean Gulf level, bolt 92.433 feet.

Elevation, mean Gulf top of cap 96.430 feet.

References, to transit line point 492, True bearing S. 81° 26′ 39″ W., distance 688.08 feet.

Triangular blaze on 24 inch twin pecan tree, true bearing N. 18° 24′ 00″ W., distance 26 feet.

Triangular blaze on 24 inch post oak tree, true bearing S. 2° 01′ 00″ W., distance 151 feet.

To Angle Point	True Bearing	Distance—Feet
Angle Point No. 21	S. 21° 13′ 02″ W.	2,153.92
Angle Point No. 20	S. 41 12 28 W.	2,029.51
Angle Point No. 19	S. 60 54 58 W.	2,683.53
Angle Point No. 22	S. 12 47 17 E.	3,903.66

B. M. 78 M., Issaquena County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River, 3 miles north along levee from Warren-Issaquena County line, 1,000 feet to the land side of levee station 9110, 100 feet east road that parallels levee.

Station mark: Iron post with brass cap on stone subsurface marker.

Latitude 32° 36′ 44.90″. Longitude 90° 59′ 27.32″.

Elevation, mean gulf level, bolt 88.802 feet.

Elevation, mean gulf top of cap 92.802 feet.

Reference, to P. B. M. Albemarle, True bearing N. 76° 40′ 28″ W., distance 611.68 feet.

B. M. 79 M., Warren County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River at Bellevue, 1,000 feet to land side of levee at levee station 9290, 1,000 feet east of where upper end of Brunswick protection levee joins main levee, 1,000 feet north of church which is inside of protection levee, 150 feet east of road paralleling main levee, in north edge of open field near woods line.

Station mark: Iron post with brass cap, on stone subsurface marker.

Latitude 32° 34′ 26.36″. Longitude 91° 01′ 44.34″.

Elevation, mean gulf level, bolt 93.355 feet.

Elevation, mean gulf top of cap 97.355 feet.

References, P. B. M. Bellevue, true bearing N. 84° 42′ 58″ W., distance 953.06 feet.

Triangular blaze on 24 inch pecan tree, true bearing N. 20° 37′ E., distance 51 feet.

B. M. C. H. B.-2, Issaquena County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River in thick timber, 2,500 feet north of Bellevue, 1,025 feet northwest of levee at transit line point 509,754 feet back of top bank of river.

Station mark: Iron post 3 inches diameter, with brass cap, on a concrete subsurface marker.

Latitude 32° 34′ 49.78″. Longitude 91° 01′ 44.93″.

Elevation, mean gulf level, bolt 93.966 feet.

Elevation, mean gulf top of cap 97.976 feet.

To mark or Angle Point	True Bearing	Distance—Feet
Angle Point No. 49	N. 71° 36′ 45″ W.	3,085.68
B. M. C. H. B. 3	N. 32 01 28 W.	517.40

B. M. C. H. B. 3, Issaquena County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River, in thick timber, 0.5 mile north of Bellevue, 1,542 feet northwest of levee at transit line point 509, 237 feet back of top bank of river.

Station mark: Iron post 3 inches diameter, with brass cap, on a concrete subsurface marker.

Latitude 32° 34′ 54.12″. Longitude 91° 01′ 48.13″.

Elevation, mean gulf level, bolt 95.671 feet.

Elevation, mean gulf top of cap 99.671 feet.

To mark or Angle Point	True Bearing	Distance—Feet
Angle Point No. 48	N. 46° 00′ 52″ W.	2,367.71
B. M. C. H. B. 2	S. 32 01 28 E.	517.40

B. M. C. H. B. 4, Warren County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River, in grove of hackberry trees, 0.7 mile west of Bellevue, 2,220 feet northwest of levee, at transit line point 512, 1,500 feet below Bellevue landing and 650 feet back of top bank of river.

Station mark: Iron post 3 inches diameter with brass cap, on a concrete subsurface marker.

Latitude 32° 34′ 21.53″. Longitude 91° 02′ 36.82″.

Elevation, mean gulf level, bolt 92.425 feet.

Elevation, mean gulf top of cap 96.360 feet.

To marker or Angle Point	True Bearing	Distance—Feet
Angle Point No. 51	N. 66° 21′ 53″ W.	3,026.50
B. M. C. H. B. 5	S. 30 38 28 E.	600.00

B. M. C. H. B. 5, Warren County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River, in grove of hackberry trees, 0.7 mile west of Bellevue, 1,600 feet Northwest of levee at transit line point 512, 1,900 feet south of Bellevue Landing, 1,250 feet back of top bank of river.

Station mark: Iron post 3 inches diameter with brass cap, on a concrete subsurface marker.

Latitude 32° 34′ 16.42″. Longitude 91° 02′ 33.24″.

Elevation, mean gulf level, bolt 92.018 feet.

Elevation, mean gulf top of cap 95.998 feet.

To mark or Angle Point	True Bearing	Distance—Feet
Angle Point No. 51	N. 60° 40′ 20″ W.	3,531.63
B. M. C. H. B. 4	N. 30 38 28 W.	600.00

Geographic Positions of Monuments or Angle Points

Monument or Angle Point	Latitude	Longitude	True Bearing to Next Angle Point	Distance Feet
0	32° 36′ 48.23″	91° 02′ 56.39″	N.38° 53′ 52″E.	443.72
1	32 36 51.65	91 02 53.13	N.38 53 52 E.	693.40
2	32 36 56.99	91 02 48.04	N.31 15 30 E.	665.11
3	32 37 02.61	91 02 44.01	N.19 26 00 E.	950.27
4	32 37 11.48	91 02 40.31	N.37 15 52 E.	760.25
5	32 37 17.47	91 02 34.93	N.30 34 00 E.	900.10
6	32 37 25.14	91 02 29.58	N.17 31 45 E.	849.14
7	32 37 33.15	91 02 26.59	N. 1 18 00 W.	845.30
8	32 37 41.50	91 02 26.82	N. 4 15 03 E.	950.06
9	32 37 50.88	91 02 26.00	N. 8 56 40 E.	744.25
10	32 37 58.16	91 02 24.65	N.27 13 54 E.	668.42
11	32 38 04.04	91 02 21.07	N.22 25 13 E.	800.60
12	32 38 11.36	91 02 17.50	N.40 39 39 E.	777.20
13	32 38 17.20	91 02 11.58	N.54 14 38 E.	838.66
14	32 38 22.05	91 02 03.63	N.73 22 23 E.	795.74
15	32 38 24.30	91 01 54.71	N.14 00 04 E.	1,390.35
16	32 38 37.65	91 01 50.78	N.74 39 06 E.	836.20
17B	32 38 39.84	91 01 41.35	N.49 10 55 E.	1,250.8
18	32 38 47.93	91 01 30.28	S.62 41 17 E.	953.7
19	32 38 43.60	91 01 20.37	S.77 33 57 E.	1,032.4
20	32 38 41.40	91 01 08.58	S.49 12 26 E.	736.4

Geographic Positions of Monuments or Angle Points

Monument or Angle Point	Latitude	Longitude	True Bearing to Next Angle Point	Distance Feet
21	32° 38′ 36.64″	91° 01′ 02.06″	S.42° 24′ 55″E.	2,436.8
22	32 38 18.84	91 00 42.84	S.45 25 45 E.	887.2
23	32 38 12.68	91 00 35.45	S.37 10 48 E.	857.5
24	32 38 05.92	91 00 29.39	S.20 25 44 E.	901.6
25	32 37 57.56	91 00 25.71	S.35 08 41 E.	1,515.3
26	32 37 45.30	91 00 15.51	S.18 36 38 E.	825.4
27	32 37 37.56	91 00 12.43	S.11 05 38 E.	791.0
28	32 37 29.88	91 00 10.65	S.17 48 44 E.	785.6
29	32 37 22.48	91 00 07.84	S. 7 11 03 E.	1,703.2
30	32 37 05.76	91 00 05.35	S. 5 17 45 W.	834.3
31	32 36 57.54	91 00 06.25	S.28 30 26 W.	860.3
32	32 36 50.06	91 00 11.05	S.15 09 30 E.	759.1
33	32 36 42.81	91 00 08.73	S.17 47 47 W.	1,656.9
34	32 36 27.20	91 00 14.65	S.42 26 12 W.	716.2
35	32 36 21.97	91 00 20.30	S.30 20 11 W.	872.3
36	32 36 14.52	91 00 25.45	S.31 11 56 W.	1,187.4
37	32 36 04.47	91 00 32.64	S.45 04 26 W.	768.5
38	32 35 59.10	91 00 39.00	S.53 33 10 W.	794.5
39	32 35 54.43	91 00 46.47	S.44 03 56 W.	784.8
40	32 35 48.85	91 00 52.85	S.52 09 41 W.	1,622.8
41	32 35 39.00	91 01 07.83	S.60 15 21 W.	937.1
42	32 35 34.40	91 01 17.34	S.61 44 23 W.	875.2
43	32 35 30.30	91 01 26.35	S.70 05 50 W.	1,041.9
44	32 35 26.79	91 01 37.80	S.58 31 11 W.	901.9
45	32 35 22.13	91 01 46.79	S.84 07 48 W.	958.2
46	32 35 21.16	91 01 57.93	S.52 52 15 W.	738.4
47	32 35 16.75	91 02 04.81	S.23 16 03 W.	699.7
48	32 35 10.39	91 02 08.04	S.40 35 03 W.	1,461.2
49	32 34 59.41	91 02 19.15	S.51 45 00 W.	1,830.0
50	32 34 48.20	91 02 35.94	S.62 30 00 W.	3,210.0
51	32 34 33.54	91 03 09 22		

Total distance along the boundary line from monument zero to angle point No. 51 is 52096 feet, equals 9.87 miles.

Geographic Positions of stations on the reference line run along the levee with ties to P. B. M. 96/1, P. B. M. Albemarle, P. B. M. 97/a and P. B. M. Bellevue. Each station is marked by a wooden post six inches square set firmly in ground.

Station	True Bearing to next station	Distance-Feet to next Station	Latitude	Longitude
P. B. M. 96/1	S.11° 18′ 07″W.	1,537.05	32° 38′ 24.04″	91° 03′ 59.38″
484	N.84 38 13 E.	1,694.95	32 38 09.13	91 04 02.90
485	N.45 07 01 E.	1,831.24	32 38 10.69	91 03 43.16
486	N.69 46 58 E.	3,164.55	32 38 23.48	91 03 27.99
487	N.65 20 21 E.	1,356.15	32 38 34.30	91 02 53.26
488	N.24 21 26 E.	1,185.50	32 38 39.90	91 02 38.85
489	N.78 13 23 E.	6,093.49	32 38 50.58	91 02 33.14
490	S.73 00 34 E.	1,127.40	32 39 02.89	91 01 23.38
491	S.63 39 42 E.	941.81	32 38 59.63	91 01 10.77
492	S.53 39 20 E.	2,952.70	32 38 55.49	91 01 00.90
493	S.44 06 51 E.	2,627.38	32 38 38.18	91 01 33.09
494	S.14 48 07 E.	936.93	32 38 19.51	91 00 11.70
495	S.35 34 01 W.	644.21	32 38 10.55	91 00 08.90
496	S.20 16 04 E.	2,054.71	32 38 05.36	91 00 13.29
497	S.70 53 35 E.	433.61	32 37 46.29	91 00 04.97
498	S.24 25 16 E.	705.13	32 37 44.88	91 00 00.18

FOLD-OUT IS TOO LARGE TO BE FILMED

Station	True Bearing to next station	Distance-Feet to next Station	Latitude	Longitude
499	S.37° 36′ 27″E.	2,379.40	32° 37′ 38.53″	90° 59′ 56.77″
500	S.33 17 54 E.	693.60	32 37 19.88	90 59 39.79
501	S. 1 58 55 W.	2,869.10	32 37 14.14	90 59 35.34
502	N.74 06 47 E.	197.80	32 36 45.77	90 59 36.51
P. B. M. Albemarle			32 36 46.30	90 59 34.28
502	S.23 22 47 W.	720.00	32 36 45.77	90 59 36.51
503	S.29 03 50 W.	2,578.60	32 36 39.22	90 59 39.85
504	S.56 35 31 W.	2,030.10	32 36 16.92	90 59 54.49
505	S.37 04 34 W.	3,835.15	32 36 05.86	91 00 14.30
506	S.16 32 00 E.	983.43	32 35 35.58	91 00 41.33
P. B. M. 97/a			32 35 26.25	91 00 38.06
506	N.69 34 15 W.	820.53	32 35 35.58	91 00 41.33
507	S.37 46 00 W.	4,417.25	32 35 38.42	91 00 50.32
508 eccentric	S.31 51 30 W.	2,700.00	32 35 03.87	91 01 21.93
509	S.48 31 00 W.	2,014.77	32 34 41.18	91 01 38.58
510	S.41 31 42 E.	100.38	32 34 27.97	91 01 56.22
P. B. M. Bellevue			32 34 27.23	91 01 55.44

Total distance 54345 feet—10.3 miles.

Geographic Positions of Stations on the tie line from B. M. Noah to Monument No. 3 of the Louisiana-Mississippi Boundary line.

Station	True Bearing to next station	Distance-Feet to next Station	Latitude	Longitude
B. M. Noah	N.67° 59′ 07″W.	401.93	32° 36′ 39.18″	91° 01′ 33.42″
4 N	N.68 37 39 W.	1,300.25	32 36 40.67	91 01 37.78
3 N	N.68 36 40 W.	1,673.91	32 36 45.36	91 01 51.93
2 N	N.68 37 57 W.	1,609.09	32 36 51.40	91 02 10.15
1 N	N.68 37 34 W.	1,500.34	32 36 57.20	91 02 27.67
Boundary Line Monument No. 3			32 37 02.61	91 02 44.01

A statement of the time employed and the expense incurred in the performance of the work will be the subject of a later report. In compliance with the terms of the decree, 10 copies of the report with map have today been filed with the Clerk of the Court. Fifteen additional copies of the report with map have been filed with the Clerk of the Court for use of such interested parties as may apply for them.

Respectfully submitted,

SAMUEL S. GANNETT,
Commissioner.

Washington, D. C., May 17, 1933.

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